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Nos. 13,198, 13,199.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

No. 13,198.

FYKE FARMER,
Appellant,

vs.

J. M. ROUNTREE, Director of Internal Revenue, et al.,
Appellees.

No. 13,199.

FYKE FARMER,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

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APPENDIX TO MAIN BRIEF OF APPELLANT.

FYKE FARMER,
300 West Bellevue Drive,
Nashville 5, Tennessee,
Pro Se.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 1-4477.

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In the
UNITED STATES DISTRICT COURT
For the Middle District of Tennessee.

FYKE FARMER,
Bellevue Drive,
Nashville, Tennessee,
Plaintiff,

vs.

J. M. ROUNTREE, Director of Internal Revenue for the District of Tennessee; FRANK TAYLOR, Deputy Collector of Internal Revenue, and FIRST NATIONAL BANK, Springfield, Tennessee, a Corporation,
Defendants.

Civil Action.
No. 1685.

DOCKET ENTRIES.

Date	
4-24-53	Complaint filed with Exhibits A & B.
4-24-23	Motion of pltf. filed notifying defts. of hearing of motion 4-27-53 for order to tender ⅓ of amt. of income tax assessment & temp. injunction or restraining Order.
4-24-53	Summons issued with attested copies of complaint to Marshal for service on defts., U. S. Atty. & Atty. Genrl.
4-28-53	Summons returned, executed & filed—MFE. $12.30 (9020).
6-25-53	Motion of defendant to dismiss filed, copy furnished to plaintiff by U. S. Atty.

Docket Entries

7- 9-53	Answer & counterclaim Nature of Interpleader filed by First Natl. Bank of Springfield; att. copy mailed to pltf. & 3 att. copies handed U. S. Atty.
7-17-53	Motion to vacate Notice to take deposition filed by deft. who is mailing pltf's atty. copy.
7-17-53	Motion to stay taking of deposition filed by deft. who is mailing pltf. copy.
7-21-53	*Motion of First Natl. Bank of Springfield that it be allowed to pay into registry $6750 filed; att. copy mailed to pltf. & 4 att. copies handed U. S. Atty.
7-20-53	*Pltf's. Opposition to Motions to Stay Taking of Depositions & to Vacate Notice to Take Depositions filed.
7-23-53	Order Continuing Hearing by consent of the parties on defts' motion to vacate notice to take depositions & motion to stay the taking of deposition of H. S. Truman; 4 att. copies handed Mr. Denning who is mailing pltf. copy.
7-29-53	Affidavit of Fyke in support of his oppositions to motions filed.
7-29-53	Interrogatories submitted by pltf. requesting Herbert Brownell to answer under oath certain interrogatories; 3 copies handed U. S. Atty. by pltf.
7-31-53	Additional interrogatories of pltf. requesting Herbert Brownell to answer under oath certain interrogatories; 3 copies handed U. S. Atty.
8- 5-53	Objections to Interrogatories filed by defts. as to Brownell, with certificate of service.
8- 5-53	Reply of Fyke Farmer to counterclaim of 1st Natl. Bank, Springfield, Tenn., filed.

Docket Entries

8- 5-53 Pltf's consent to payment of funds into Court by First Natl. Bank of Springfield & Motions with respect to hearing filed.

8- 5-53 Amendments to Complaint filed by pltf. (allowed in open Court).

8- 5-53 Motion of defts. to dismiss contd. to Aug. 7, 1953; Ordered by the Court that 1st Natl. Bank of Springfield pay into this Court the money on which lien was issued to said Bank subject to said Orders of this court (in open court).

8- 7-53 Defts.' Motion to dismiss taken under advisement by the Court.

8-10-53 Ordered that First Natl. Bank of Springfield pay into registry $6,750 and that said bank be dismissed from cause without costs, and that pltf. be allowed to file amendments to complaint; 1 att. copy mailed to atty. for 1st Natl. Bank & remaining copy handed Mr. Swiggart.

8-11-53 O. C. R. Shorthand notes filed.

8-17-53 Pltf's. Motion for leave to amended complaint & for Order directing that question of jurisdiction be determined at hearing of the merits filed.

10-19-53 Plaintiff's Petition for Release of Lien, filed, by letter of plaintiff to Fred Elledge, U. S. Atty., dated 10-16-53, plaintiff furnished U. S. Attorney three copies of said Petition.

10-21-53 Order entered by approval of counsel releasing Lien, and Two certified copies of said order delivered to plaintiff and paid for by him, and three attested copies of said order delivered to U. S. Attorney.

Docket Entries

1-29-54	Notices to take depositions upon written Interrogatories filed, together with Interrogatories by Plaintiff to be answered by John Gunther and W. M. Hansen, these also being filed. Each of said Notices and Interrogatories being accompanied with a certificate of service showing three copies of them were delivered to Fred Elledge, Jr., U. S. Attorney.
2-25-54	Notices to take depositions upon Interrogatories to J. M. Rountree & Frank Taylor filed, together interrogatories to be answered by Edmund F. Mansure, Maj. Gen. Wm. E. Bergin, and John D. Hickerson, and with certificates of services.
2-26-54	Notice to take depositions upon interrogatories of Harold R. Harris of St. Paul, Minn., filed with certificate of service. Three attested copies of same delivered to U. S. Atty.
8-18-53	Plaintiff's motion for leave to amend complaint and for order directing that question of jurisdiction be determined at hearing of the merits granted by the Court.
8-18-53	Amended Complaint filed, three attested copies delivered to U. S. D. A.
8-24-53	Notice to take depositions upon written interrogatories of Harry S. Truman. Certificate of service attached.
10- 2-53	Plaintiff's Notice to take depositions, upon written interrogatories, of Defendants named in caption filed, together with Certificate of Service.
10- 6-53	Notice by Plaintiff to take depositions upon written Interrogatories to be answered by the Comptroller Gen. of U. S., Lindsay C. Warren, together with Interrogatories and Proof of Service thereof, filed.

Docket Entries

10- 6-53	Notice to take depositions upon written Interrogatories, to be answered by Officer in Charge, Economic Affairs, together with Interrogatories and Proof of Service filed.
10-19-53	Plaintiff's Petition for Release of Lien filed by letter of plaintiff to Fred Elledge, U. S. Atty., dated 10-16-53, plaintiff furnished U. S. Attorney three copies of said Petition.
3- 3-54	Deposition of W. M. Hansen filed.
3- 8-54	Deposition of John Gunter filed.
3-12-54	Notices to take depositions upon Interrogatories, and Interrogatories filed with certificates of services by Fyke Farmer, as to: Frank Duvall, Gen. Charles A. Willoughby, USA (Ret.), and John J. Muccio.
3-12-54	Three Attested copies of each of aforementioned Notices, Interrogatories, and Certificates of Services delivered to U. S. Atty.
3-12-54	One Certified copy of each of above mentioned Notices, Interrogatories, and Cert'fs of Service delivered to Fyke Farmer.
3-15-54	Notice and Motion for Leave to Examine W. M. Hansen Orally, Filed. Certified Copy of Same Mailed Fyke Farmer, Atty., and Three Copies Delivered to U. S. Atty.
3-15-54	Notice and Supplemental Interrogatories Submitted by Plaintiff to Be Answered by Harold R. Harris, Filed. Certified Copy of Same Mailed Fyke Farmer, Atty., and Three Attested Copies Delivered to U. S. Attorney.

Docket Entries

3-19-54	Notice and Motion for Leave to subpoena John Gunther and to examine him orally filed with certificate of service.
3-19-54	Three attested copies of said Notice and Motion, etc., delivered to Mr. Fyke Farmer, for delivery to U. S. Atty.
3-29-54	Notice, Motion for order to subpoena Malcolm S. Mackay, etc., with cert'f of service filed by plaintiff. Three copies of each (attested) delivered by plaintiff to U. S. Atty.
3-29-54	Order entered granting leave for plaintiff to have issued subpoena above mentioned, etc., three attested copies of same delivered by plaintiff to U. S. Attorney.
4- 7-54	Order entered denying Deft's Motion to Dismiss suit. Attested copy mailed Fyke Farmer and three attested copies delivered to U. S. Atty.
4- 8-54	Motion to dismiss amended complaint filed by Deft. with cert'f. of service.
4-26-54	Plaintiff's request for Admission No. 2 filed with cert'f of service and with exhibits "A" and "B" to said Request
4-26-54	Three attested copies of said Request No. 2, and said exhibits "A" and "B," delivered to U. S. A.
4-26-54	Plaintiff's Motion for Order with respect to taking deposition of Gen. Chas. A. Wiiloughby upon written interrogatories filed with cert'f of service and with Collective Exhibit "A." Three attested copies of said Motion delivered to U. S. Attorney.
5- 6-54	O. C. R. shorthand notes filed.

Docket Entries

5- 7-54 Order entered denying plaintiff's motion for order requiring Herbert Brownell, Jr., Atty. Gen. of the U. S., to show cause why he should not be directed to make motion in U. S. Dist. Court for So. Dist. of N. Y. for order vacating that Court's Order of April 9, 1954, and staying defendant's motion that the answering of Plaintiff's requests for Admissions filed 4-26-54, until after this Middle Dist. of Tenn. Court rules on defendant's motion to dismiss plaintiff's action, which said motion has been taken under advisement by Judge Davies. Attested copy of said order mailed to plaintiff Fyke Farmer, and four attested copies delivered to U. S. Attorney.

5-10-54 Copy of transcript of May 5, 1954, filed by O. C. R. original to Fyke Farmer.

5-21-54 Plaintiff's Motion filed for order authorizing taking depositions and discovery proceedings for purpose of obtaining evidence to establish jurisdiction more satisfactory; also filed is plaintiff's affidavit with exhibits "A" and "B" in support of said motion, with certificate of service, Mr. Farmer delivering three attested copies of said motion and affidavit (with exception of said Exhibits) to U. S. Attorney.

6-28-54 Notice to take depositions filed by plaintiff together with cert'f. of service, depositions to be taken July 12, 1954, in office of the Clerk of the U. S. Dist. Court for the Eastern District of Missouri, Eastern Division in St. Louis, depositions of Powell B. McHaney and Sidney W. Souers.

8- 5-54 Depositions filed as to Powell B. McHaney & Sidney Souers on behalf of plaintiff.

Docket Entries

10-28-54	Motion filed by plaintiff for Joint Hearing with Action No. 1934 and for Pre-Trial Conference as to Issues involved and for Determination of Motions to Dismiss; also filed is certificate of service showing three attested copies of said Motion was delivered to U. S. Attorney (Same done by Clerk for Atty. Farmer).
11- 9-54	Notice to take deposition of John C. Caldwell at Nashville, filed by plaintiff. Three attested copies delivered to U. S. Attorney.
11- 9-54	Deposition subpoena issued upon Plaintiff's request for witness John C. Caldwell, 4102 Oriole Place, Nashville, Tenn., to give his deposition at 2:00 P. M. at office of U. S. District Court Clerk, at Nashville, November 19, 1954, and same delivered to Marshal for service.
11-22-54	Deposition Subpoena issued for John C. Caldwell returned unexecuted by Marshal. MFE.
11-29-54	Notice to Take Depositions of plaintiff's witness John C. Caldwell Dec. 8, 1954, 2:00 P. M. filed. Three attested copies delivered to U. S. Atty.
3- 2-55	Deposition of John C. Caldwell filed, same being dated December 2, 1954.
8- 5-55	Order denying defendants' motion to dismiss the amended complaint filed. Four attested copies delivered to U. S. Atty., one attested copy mailed to Atty. Fyke Farmer.
8-26-55	Stipulation filed, that the defendants shall have to and including September 23, 1955 to file their answers and to reply to the Request for Admissions (6 copies to U. S. D. A.).

Docket Entries

9- 9-55	Interrogatories submitted by plaintiff to be answered by Frank Sieverts, filed with certificate of service and Notice thereof.
9-23-25	Answer filed by defendant. Attested copy mailed to plaintiff and one delivered to U. S. Atty.
9-23-55	Response to Plaintiff's Request for Admission No. 2, filed by defts. Rountree & Taylor, one attested copy to U. S. Atty. and one to Atty. Fyke Farmer.
9-28-55	Answers filed by witness Frank Sieverts to plaintiff's Interrogatories of 9-9-55, with certificate of O. C. R. Chas. J. Degnan.
2-21-56	Notice to Take Deposition upon Interrogatories filed by plaintiff. Certificate of service attached. Deposition of Gen. Charles A. Willoughby to be taken on 3-6-56.
3- 2-56	Plaintiff's Request for Admission No. 3, filed with cert'f of service.
3- 2-56	Notice, *Motion filed by plaintiff for ruling on his motion to strike defendant's Response to plaintiff's Request for Admissions No. 2, with cert'f of service.
3- 2-56	*Motion filed by plaintiff to strike defendant's response to his request for Admission No. 2, with cert'f of service on said Notice last above filed.
3-14-56	Interrogatories filed by plaintiff for Gen. Chas. A. Willoughby, USA (Ret.) to answer, with certificate of service. Eight attested copies delivered to Atty. Farmer.
3-14-56	Plaintiff's Request for Admission No. 4, filed with certificate of service. Three attested copies delivered to Attorney Farmer.

Docket Entries

3-30-56 Interrogatories submitted by plaintiff to be answered by Omar N. Bradley, filed with certificate of service showing three attested copies delivered to U. S. Attorney and seven attested copies delivered to Attorney Fyke Farmer.

4-13-56 Interrogatories Filed by Plaintiff to Be Answered by Gen. Courtney Whitney (USA) (Ret.) and three attested copies delivered to U. S. Attorney by Attorney Farmer, certificate of service also filed. And four (4) attested copies delivered to Atty. Farmer for serving on certain officials in Washington and elsewhere.

4-13-56 Interrogatories filed by Plaintiff to be answered by Rear Admiral Roscoe H. Hillenkoetter, U. S., with certificate of service. Three attested copies delivered to Attorney Farmer for delivery to U. S. Attorney, and four (4) attested copies delivered to Attorney Farmer for services by him upon The Naval Authorities, etc.

4-27-56 Plaintiff's request for admission No. 5 filed, three attested copies delivered to U. S. Dist. Atty.

5-29-56 *Motion filed by plaintiff for formulation of issues and plaintiff's statement of issues of law and fact involved in this action filed with certificates of services.

8-28-56 Application filed by plaintiff for ruling on motion of defendants to vacate notice to take deposition of Harry S. Truman, also filed therewith is certificate of service, same setting time for hearing if Court Permits for Sept. 4, 1956. Three attested copies of said Application and certificate delivered by Atty. Farmer to U. S. Attorney.

Docket Entries

9- 5-56	Order entered setting cases Nos. 1685, 1934 and 2203 for pre-trial conference for 9-25-26, 1956, four attested copies delivered to U. S. Atty. One mailed to Atty. Fyke Farmer.
9-18-56	Notice filed by plaintiff addressed to U. S. Atty. Elledge relative to certain motions for Court Rule for Sept. 25, 1956, also filed is certificate of service; three attested copies delivered to U. S. Attorney by Attorney Fyke Farmer.
9-26-56	Certified copy of Proceedings with Reference to Subpoena for Harry S. Truman in U. S. District Court of Missouri, Western Division, filed by Plaintiff.
9-26-56	Motion by Defendant to vacate order entered herein on the 5th day of August, 1954, and for reconsideration and rehearing of said motion, or in the alternative, for judgment on the pleadings dismissing the action.
9-26-56	Order entered on pre-trial conference. Plaintiff's motion allowing him ten days for serving opposing affidavits and otherwise resisting the defendant's motion for judgment on the pleadings is denied. Ordered that the plaintiff, in lieu of filing affidavits or taking depositions, have until October 5, 1956, to file any amendment to his complaint, and defendants have until October 9, 1956 to file any responsive pleading thereto, and both parties shall file any brief in support thereof. All other matters pending in this case shall be reserved until decision upon the defendant's motion for judgment on the pleadings.
9-26-56	O. C. R. transcript and shorthand notes filed on pre-trial conference.

Docket Entries

10- 5-56	*Amendments to Complaint filed by Plaintiff with certificate of service, three attested copies delivered by Atty. Farmer to U. S. Atty. Fred Elledge, Jr.
10- 5-56	Order entered vacating defendant's motion to take Harry S. Truman's deposition, and dismissing action as to First Nat'l Bank of Springfield; allowing plaintiff until Oct. 8, 1956, to file amendments to pleadings and brief, and opposite parties time to file, etc., extended to Oct. 16, 1956. Copy of said order mailed to all counsel of record. Six attested copies delivered to U. S. Attorney.
10- 9-56	Brief and Argument filed by plaintiff in opposition to Motion for Judgment on the Pleadings, also filed is cert'f of service.
10-12-56	Photostatic copy of Docket Entries in Civil Action No. 1685, delivered to Attorney Fyke Farmer upon his request.
10-16-56	Motion filed by defendant for order to vacate order heretofore entered on 8-5-55, and for reconsideration and rehearing of said motion, or for judgment on the pleadings, as amended, dismissing the action; also copy furnished Atty. Farmer and four attested copies delivered to U. S. Attorney.
10-16-56	Motion filed by plaintiff to strike defendant's motion to vacate aforesaid order, also cert'f of service filed. Three attested copies of said motion delivered to U. S. Attorney.
10-16-56	Brief on behalf of plaintiff filed with cert'f of service.

Docket Entries

10-16-56 Order entered by consent allowing parties adopt the complaint and other responsive pleadings heretofore filed as the same response to the amendments filed Oct. 5-9, 1956. Copy mailed to Atty. Farmer, nine attested copies delivered to U. S. Attorney.

10-17-56 *Memorandum-Opinion entered by Justice Wm. E. Miller, directing an order be entered on said Memo-Opinion to effect that the Government's action for judgment on the pleadings is sustained. Attested copy mailed to the Attorney General at Washington, attested copy mailed to Attorney Farmer, and three attested copies delivered to the U. S. Attorney.

10-29-56 Motions for Reconsideration and Rehearing, and of Fyke Farmer to take judicial knowledge of the facts and documents mentioned in the requests for admission filed, also filed is certificate of service and brief in support of said motion for consideration.

10-31-56 *Exceptions to Findings by the Court filed by plaintiff, three attested copies delivered to the U. S. Attorney.

11-14-56 Copy of O. C. R. Proceedings of Sept. 25, 1956, filed, original to Atty. Fyke Farmer.

11-16-56 *Judgment and Decree entered granting defendant's motion for judgment on the pleadings and further directing dismissal with costs to defendants Rountree and Taylor. Five attested copies delivered to U. S. Attorney, one to Fyke Farmer and one mailed to the Attorney General at Washington, D. C.

11-21-56 Order entered overruling and denying the Taxpayer's motions for rehearing, also exception to Court's Findings, etc., also denying Taxpayer's motion to not be held liable for interest, etc., and further ordered the final judgment heretofore entered shall remain in full force and effect. Attested copy of said order mailed to Attorney Fyke Farmer, one to the Attorney General at Washington and two attested copies delivered to the U. S. Attorney.

1-14-57 Notice of Appeal filed with certificate of service.

1-14-57 Bond for costs on Appeal filed, with certificate of service.

2-13-57 Transcript of excerpt from Proceedings of September 25, 1956, filed O. C. R. Orig. to Atty. Fyke Farmer.

2-18-57 Order entered extending time for filing and docketing records on appeal to and including April 10, 1957.

Civil Action No. 1685.

COMPLAINT.

(Filed April 24, 1953.)

I.

Plaintiff seeks, under the Declaratory Judgments Act, a declaration of his rights and other legal relations arising from the principles of International Law recognized in the Charter and Judgment of the Nuremburg Military Tribunal and unanimously reaffirmed by the first session of the United Nations General Assembly.

Plaintiff also asks for injunctive relief to restrain the defendants from the commission of acts in violation of the Constitution and the law of the land by which plaintiff is threatened with the deprivation of his rights to liberty and property guaranteed to him by the Fifth, Ninth and Tenth Amendments to the Constitution. Said rights, as will be hereinafter more fully shown, are also basic human rights and the fundamental freedom of individuals, the protection of which was one of the objects and purposes of the United Nations Organization.

II.

This case is one arising under the Constitution, the Laws of the United States, and Treaties made by the authority of the United States and is within the judicial power conferred by Art. III, Sec. 2 of the Constitution.

In addition to the personal right involved, there are also property rights of the plaintiff, and the matter in controversy exceeds the sum or value of $3,000.00, exclusive of interest and costs.

This Court has jurisdiction under Sec. 1331 of Title 28 U. S. C., and under Sec. 2001 of Title 28 U. S. C.

III.

Plaintiff is a citizen of the United States, and a citizen and resident of the State of Tennessee.

The defendant, J. M. Rountree, is sued in his official capacity as Director of Internal Revenue for the District of Tennessee. The co-defendant, Frank Taylor, is Deputy Collector of Internal Revenue. The defendant, First National Bank, Springfield, Tennessee, is a National bank.

IV.

A controversy exists between plaintiff and the government of the United States as regards plaintiff's rights and other legal relations arising under international law, generally known as the Nuremberg International Law.

Plaintiff avers that the Nuremberg International Law has become a part of the law of the land of the United States.

The treaty between the United States and sixty-one other powers (generally known as the Kellogg-Briand Pact), providing for the renunciation of war as an instrument of national policy, was proclaimed by President Herbert Hoover, July 24, 1929, and in pursuance to law was published in 46 Stat. 2343. President Hoover's proclamation stated:

> "Now Therefore, be it known that I, Herbert Hoover, President of the United States of America, have caused the said treaty to be made public, **to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.**"

On January 1, 1942, the representatives of twenty-six nations that were fighting against the Axis governments, signed in Washington, D. C., a Declaration by United Nations. The text of the Declaration is in part as follows:

> "The Governments signatory hereto,
>
> Having subscribed to a common program of purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland dated August 14, 1941, known as the Atlantic Charter."

The United Nations Declaration and the Atlantic Charter were published in 55 Stat. 1600. The Atlantic Charter, among other things, stated:

> "They believe that all nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force."

and

> ". . . no future peace can be maintained if land, sea, or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside their frontiers . . ."

In addition to the original twenty-six signatories, twenty-one nations during World War II adhered to the United Nations Declaration.

On June 26, 1945, the Charter of the United Nations was signed at San Francisco, and was proclaimed by President Harry S. Truman to be effective October 24, 1945. In pursuance to law, the Charter and the President's Proclamation were published in 59 Stat. 1031. The Proclamation states that it was proclaimed:

> ". . . **to the end that the same and every article and clause thereof may be observed and fulfilled with good faith**, on and from the twenty-fourth day of October, one thousand nine hundred, forty-five, by the United States of America and **by the citizens of the United States of America** and all other persons subject to the jurisdiction thereof."

By Article 2, Section 4 of the United Nations Charter, it is provided:

> "All members shall refrain in their international relations from the threat or use of force against the

territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."

One of the principal purposes of the United Nations was stated by the Charter to be:

"Article I.

"The Purposes of the United Nations are:

"1. To . . . bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

During World War II and immediately following the cessation of hostilities in that War, the government of the United States joined with certain other United Nations governments in the creation of an International Military Tribunal for the prosecution and punishment of major war criminals of the European Axis. President Harry S. Truman, acting under the authority vested in him as President and Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States, by Executive Order 9547, dated May 2, 1945, designated Robert H. Jackson, Associate Justice of the Supreme Court, as the Representative of the United States and as its Chief of Counsel to prepare and prosecute charges of atrocities and war crimes against such of the leaders of the European Axis powers and their accessories as the United States might agree with any of the United Nations to bring to trial before an international military tribunal.

By Executive Order Number 9626, dated September 24, 1945, the said Harry S. Truman in his capacity as President, and in virtue of the authority above mentioned, ap-

pointed the member and alternate member of the United States of the International Military Tribunal established for the trial and punishment of the major war criminals of the European Axis.

In pursuance to law, the agreement signed in London August 8, 1945, providing for the creation of the International Military Tribunal and the Charter of the Tribunal, were published as Executive Agreement, Series 472, in 59 Stat. 1544.

By the Charter of the International Military Tribunal, formulated by Justice Robert H. Jackson, as the United States Representative, and by the Representatives of the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, the following fundamental principles of law were declared:

The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, is an offense against peace for which individuals are responsible.

The rule of individual responsibility for crimes against peace applies whether the individual is the head of state or a responsible official in government departments, or is one who has merely acted pursuant to order of his government or of a superior.

An individual who consents as an accomplice to assist in the commission of any of the foregoing crimes is responsible for all acts performed by the leaders, organizers and instigators.

The Charter of the Tribunal was adhered to by nineteen of the other United Nations.

The Tribunal in its Opinion and Judgment declared:

> "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced. . . .
>
> ". . . the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State."

The principles of international law recognized in the Charter and Judgment of the Nuremberg Tribunal, on motion of the United States government, were unanimously reaffirmed by the first session of the United Nations General Assembly.

The International Military Tribunal for the Far East, applied the same principles of international law in punishing the Japanese war leaders.

V.

Notwithstanding the Nuremberg International Law, the government of the United States, shortly after the end of World War II, adopted the policy of using force and threats of force against other governments and people of foreign countries and commenced a program of rearming and organizing military pacts and alliances in connection with planning and preparing war. By the time of the formation of the so-called North Atlantic Treaty Organization in 1949, war had become an instrument of national policy of the Government of the United States in violation of the Kellogg-Briand Pact.

This foreign policy based on military force has culminated in the Korean War which has been initiated and waged by the government of the United States in violation of the Nuremberg International Law. The United

Nations Organization has been utilized as an instrumentality for the purported authority to initiate and wage in Korea a war of aggression against the territorial integrity and independence of Korea and in violation of international treaties, agreements and assurances to which the United States was a party, namely, the Kellogg-Briand Pact, the Atlantic Charter, the Charter of the United Nations, and the Cairo and Potsdam declarations.

VI.

Plaintiff avers that the Nuremberg International Law and the other treaties above mentioned, are now a part of the law of the land of the United States, and plaintiff recognizes these principles as binding upon him as a citizen of the United States. He, therefore, avers that he has a legal right to refrain from any participation in the planning, preparation, initiation or waging of war by the United States government. This right or immunity from participation in war is a basic human right of every citizen which was by the Fifth, Ninth and Tenth amendments reserved from the powers delegated to the national government.

Plaintiff is conscientiously opposed to participation in the war activities of the government. He relies upon the right of individual conscience under the fundamental law of the Constitution, and particularly upon the clause of the Declaration of Rights of the Tennessee Constitution providing that:

> ". . . no human authority can, in any case whatever, control or interfere with the rights of conscience;"

The controversy between plaintiff and the defendants relates to the existence of the foregoing right or immunity. The controversy arose when the plaintiff protested the

assessment against him of federal income taxes for the year 1949. The ground of his protest was that a very large percentage of the federal revenue was being devoted to the illegal activity of planning, preparing, initiating and waging of war. The Commissioner of Internal Revenue denied the existence of the right of immunity which plaintiff has claimed.

Plaintiff, notwithstanding his protest, has been assessed by the Commissioner of Internal Revenue with a federal income tax for the year 1949 in the sum of $4,733.95, plus interest from July 17, 1950. A copy of plaintiff's protest against the proposed assessment is annexed hereto and marked Exhibit "A" and made a part hereof.

After demand was made upon him by the Collector of Internal Revenue for the District of Tennessee, plaintiff, for the reasons stated, refused payment of the tax. The Collector notified plaintiff that a warrant for distraint had been issued to collect the tax, and threatened to seize and sell plaintiff's property. On June 8, 1951, notice of a federal tax lien for the amount of such assessment was filed by the Collector, as authorized by the law of the State of Tennessee, and was recorded in the office of the Register of Deeds of Davidson County, where plaintiff resided and where real estate belonging to him was situated, and on June 22, 1952, notice of said lien was filed and recorded in the Office of the Register of Deeds of Robertson County, Tennessee, where real estate belonging to plaintiff was situated.

On the dates of the completion of the assessment and of the filing of notices of said lien, fully seventy per cent of the federal revenue was being misappropriated by the Congress for illegal war planning, preparation, initiation and waging.

Plaintiff requested the said Harry S. Truman, as President, to exercise the power conferred upon him by the Constitution, to take care that the laws are executed and issue an executive order setting aside the assessment against him, cancelling the lien and warrant for distraint that had been issued, and directing a reassessment of the 1945 income tax against plaintiff for lawful purposes only. Said request was by letter dated June 23, 1952, addressed to President Harry S. Truman. Having received no reply to this letter, plaintiff, on July 22, 1952, wrote another letter to the President.

Plaintiff addressed a petition to the General Assembly of the United Nations seeking, among other things, support of the General Assembly for his refusal to support the illegal activities of the government of the United States relating to war planning and war making. He sent a copy of this petition to Harry S. Truman, as President of the United States, requesting him to direct the United States delegation to the United Nations to propose said petition be included in the provisional agenda of the Seventh Session of the General Assembly. On October 10, 1952, the Department of State answered said letter declining plaintiff's request that his petition be submitted as an item for the agenda of the General Assembly, on the ground that the Nuremberg judgment "offers no precedent for the imposition of responsibility of the national policy on individuals who exercise no substantial control over that policy." Copies of plaintiff's letters to President Truman, and the reply of the Department of State thereto, are annexed as Exhibit "B" and made a part hereof.

Plaintiff for a number of years has advocated and worked for the implementation of the Nuremberg principles by the establishment of a world criminal jurisdiction and a world government to bring world affairs under

control through world law. Therefore, his responsibility for violation of the Nuremberg principles would arise should he abandon and deny them by taking a consenting part in national war planning and waging. His position is set forth in his reply to the State Department's letter, which is a part of Exhibit "B" and made a part hereof.

VII.

On January 31, 1953, plaintiff wrote a letter to President Dwight Eisenhower, and sent a certified check for $1,803.61 as a tender of one-third of the aforesaid tax assessment against him, with interest. The tender was made upon the condition that the proceeds of the check be not deposited in the General Fund of the Treasury, but instead be segregated in a special account or fund in the Treasury, subject to appropriations for the lawful and constitutional civil functions of the government, and so that no part thereof would be subject to appropriations for the planning, preparation, initiation or waging of war. A copy of said letter is filed herewith as Exhibit "C" and made a part hereof.

President Eisenhower made no reply to said letter. Petitioner about a week ago was called by the defendant Frank Taylor and asked to come to the office of the Director of Internal Revenue. Petitioner complied with this request and thereupon the said defendant handed the certified check back to plaintiff, stating that he had been instructed to levy on plaintiff's property to collect the tax.

On April 23, 1953, the said defendant Frank Taylor, purporting to act under the authority of the warrant of distraint, attempted to collect said assessment from the defendant First National Bank of Springfield, which is holding in an escrow account a sum of money belonging to plaintiff in excess of the total amount of the assessment, with interest.

VIII.

Plaintiff herewith tenders the sum of $1,828.61 in discharge and satisfaction of his tax liability for the year 1949. This sum is one-third of the assessment against him for that year, with interest to date. According to official reports and estimates, only one-third of the federal revenue was being used for the lawful civil function of the government at the time of the assessment and the placing of the lien against plaintiff's property.

Plaintiff tenders said sum of $1,828.61 as the part of the aforesaid tax which he is lawfully and constitutionally obligated to pay, and asks this Court to direct the discharge of his property from the lien of the assessment against him. But this tender is upon condition that said payment be segregated and held in a special account or trust fund in the Treasury subject to being appropriated only for lawful, proper civil functions of the government (including interest on the Public Debt and Veterans' care), but so that no part of same will be subject to be appropriated for the planning, preparing, initiation or waging of war.

IX.

Plaintiff denies any liability for the remaining two-thirds of the tax assessed against him. Unless restrained by orders of this Court, the defendants, J. M. Rountree, by his assistants and deputies, one of whom is the defendant Frank Taylor, will forcibly collect the whole of said assessment from the aforesaid deposit in the defendant, First National Bank of Springfield, or will levy on plaintiff's other property. Such actions taken and to be taken by the defendant for the purpose of collecting the tax from the plaintiff, substantially and irreparably injure plaintiff, and will continue to do so. For such injuries, plaintiff has no prompt, adequate and effective remedy at law.

Plaintiff would show that the remedy provided by statute to sue to recover the tax after payment, is inadequate because the United States is not able to refund the total amount of taxes illegally collected to cover the costs of its planning, preparation, initiation and waging of war since the Nuremberg International Law became a part of the law of the land.

Section 3653 of the Internal Revenue Code undertaking to withdraw from the judicial power the authority to hear and determine suits for the purpose of restraining the assessment or collection of any tax is inapplicable and unconstitutional as regards plaintiff. Unless the collection of the tax is restrained, the entire tax will be paid into the General Fund of the Treasury and will be available for appropriations by the Congress for illegal war activities of the government. At the present time more than three-fourths of the General Fund is being appropriated and expended for illegal war activities. Thus the collection of the tax by the ordinary processes would deprive plaintiff of his right and immunity to refrain from participating as an accomplice or accessory in the commission of a crime against peace. The essence of the international duty which the plaintiff insists he is bound to respect is that it transcends the national obligation of obedience imposed by the individual state. Therefore, coercion against him by the executive branch of the government, together with the denial of the judicial power to determine the existence of the right and immunity before the collection of the tax would amount to an unlawful restraint upon his international rights and duties which, according to the Nuremberg judgment, transcend his duties of obedience to the laws and orders of the State.

X.

Plaintiff further avers that at the time of the aforesaid assessment against him, the Congress of the United States was, and ever since said time has been, systematically violating that clause of the Constitution prohibiting the Congress from making appropriations for military uses for a longer term than two years. Despite said prohibition, Congress has made appropriations running into many billions of dollars for spending by the military branches of the government over terms of longer than two years. This violation of the Constitution has reached so great a proportion of the Federal Budget that the military spending has become the major part of the National product, thus making war the instrument of the National policy of the government.

By reason of these circumstances, the percentage of the Federal Revenue devoted to military spending is illegally and unconstitutionally levied and collected. A private citizen and taxpayer is without remedy to compel the observance of the Constitution by the Congress and the President who approves these unconstitutional appropriations, except by appealing to the judiciary to uphold the Constitution and protect the rights of the individual citizen by enjoining the collection of this illegal portion of the tax which plaintiff avers to be two-thirds.

Wherefore, plaintiff prays that:

1. The rights and legal relations of the plaintiff under the Nuremberg International Law and the Constitution, particularly as regards his immunity from complicity in the planning, preparation, initiation and waging of war by the government of the United States, be declared.

2. The defendants, J. M. Rountree and Frank Taylor, and all deputies, agents, employees and officials of the Director of Internal Revenue and the Treasury Depart-

ment, be temporarily enjoined, pending the final determination of this cause, from levying upon, seizing or selling any of plaintiff's property under any warrant for distraint, lien or other process for the collection of the aforesaid 1949 income tax from plaintiff, and that the First National Bank, Springfield, Tennessee, be also enjoined from paying over any monies in its hands belonging to plaintiff under the notice, demand or levy heretofore given, made or executed by any of said defendants.

3. Upon final hearing, it be ordered and adjudged that

(a) the tender of one-third of the amount of the 1940 income tax assessed against plaintiff upon the condition above expressed is in discharge of any and all liability on the part of plaintiff on account of or with respect to his 1949 income;

(b) that the assessment of $4,733.36 is invalid and illegal, and the lien and warrant for distraint issued for the collection thereof be canceled, vacated and set aside;

(c) and that the defendant and all other agents, employees and officials of the Treasury Department be forever enjoined from collecting or attempting to collect the remainder of said assessment from plaintiff, and

(d) that the one-third part of the tax tendered by the plaintiff be deposited and held in a special account in the Treasury so that same shall not be available to be appropriated by the Congress to pay any of the expenses of the planning, preparation, initiation or waging of war, but shall be available only for appropriations for the lawful and constitutional functions of the federal government.

4. For general relief.

FYKE FARMER,
In Person.

Exhibit "A."

Form 843
U. S. Treasury Department
Internal Revenue Service
(Revised April 1950)

Claim.

To Be Filed With the Collector Where Assessment Was Made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Name of taxpayer or purchaser of stamps Fyke Farmer.

Business address Bellevue Drive Nashville 5, Tennessee.
(Street) (City or town, postal zone number) (State)

Residence Bellevue Drive Nashville 5, Tennessee.

1. District in which return (if any) was filed Tennessee.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1949, to Jan 1, 1950.
3. Character of assessment or tax Income.
4. Amount of assessment $6,052.39. To be reduced by overassessment.
5. Tax not paid, see letter to Collector, July 27, 1950.

6. Amount to be refunded Entire tax protested.

7. Amount to be abated (not applicable to income, estate, or gift taxes) $.....

The claimant believes that this claim should be allowed for the following reasons:

I protest this entire tax upon the grounds that it is an illegal and unconstitutional deprivation of my rights and liberties under the Constitutions of the United States and the State of Tennessee and under international law which has become a part of the law of the land for the following reasons:

(1) I am conscientiously opposed to participation in war in any form, directly or indirectly;

(2) The taxes collected by the federal government are in violation of the Constitution devoted principally for war as an instrument of national policy, both domestic and foreign;

(3) By international law which, through treaties made under the authority of the United States and in pursuance to the Constitution, is the supreme law of the land, war is interdicted as a crime against humanity. As a citizen of the United States, I have the right and privilege to refrain from participation in or support of war; and,

(4) One of the fundamental rights and freedoms to which I, as a citizen of the United States, am entitled under the Constitution and the fundamental law is the right in obedience to the dictates of my own conscience to choose not to participate in war or the preparations for war. This right of conscience is unalienable and cannot be interfered with or controlled by any human authority. It would be violated if the laws enacted by the Congress could coerce me into participation in war by helping to pay for it.

Attached is a brief of the points of fact and law upon which I rely in support of the above propositions.

Brief of Points of Fact and Law Relied Upon in Support of Protest of Fyke Farmer Against the Collection of Federal Income Taxes Assessed Against Him for the Year 1949.

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Brief of Points of Fact and Law Relied Upon in Support of Protest of Fyke Farmer Against the Collection of Federal Income Taxes Assessed Against Him for the Year 1949.

I. The Taxes Raised by the Federal Government Are Devoted Principally for War.

President Truman in his Budget Message to the Congress on January 15, 1951, revealed that $52,000,000,000 of the $71,600,000,000 budget for the fiscal year 1951-1952 was definitely for military expenditures and a very large part of the remainder was involved in or related to the military spending. It is apparent that the part of the total budget which will be devoted to the constructive, beneficial and peaceful purposes of the federal government is negligible. Inasmuch as the collections from income taxes are put in the general fund of the Treasury, the taxpayer has no way to support the regular functions of the government without supporting war.

(a) **The government is using armed violence to impose its will on the peoples of foreign countries** (1) **while the armaments industry has become the principal business of the country.** (2) **Thus war is an instrument of national policy domestic and foreign.** (3)

(1) Through the taxing power, the President and the Congress are attempting to create a powerful military system or establishment equipped with atom bombs, hydrogen bombs, and other means and instruments for the mass destruction of human life and property on a world wide scale. These military calculations involve the maintenance and improvement, over an indefinite period, of a technique for mass killing and destruction superior to that which any other nation or group of nations may be

able to develop. The success of the scheme necessarily depends upon the terrorization of millions of men, women and children massed in the cities of Europe, Russia and Asia.

By the national law the control of these infernal devices and inventions for destruction is vested in one man, the President, as Commander-in-Chief of the army and navy. The President, Harry S. Truman, in his official capacity, has publicly declared that once before he gave orders to drop atom bombs and would not hesitate to make the decision again "if it has to be made for the welfare of the United States, and the democracies of the world are at stake".

By the President's own declaration, the fate of many millions of good and innocent people in other countries of the world is subject to his will. One man thus holds the absolute power of life and death over countless millions of human beings! In the absence of any authority or law to control his actions, his will means his whim or caprice. This is immorality, tryanny and barbarism in its most revolting form.

(2) The nation's economic system has become dependent on the business of manufacturing armaments, violence and war.

The Monthly Letter on Economic Conditions and Government Finance, published by the National City Bank of New York for January, 1951, states: "The country is moving more rapidly each month to make armaments its principal business, and to subordinate civilian activity and the peacetime way of life as far as may be necessary."

The United States News for January 26, 1951, in its regular weekly discussion of the trend of American business, states:

"Future course of U. S. business is outlined in the President's budget.

"Dollar figures, impressive in themselves, are even more significant as a measure of what industry is to be required to do, what businessmen are facing.

"Government proposes to commit 182 billion dollars in the 18 months ahead. That won't all be spent in that time, but business will feel its effects.

"To get a clearer idea of what 182 billion dollars means, consider these comparisons: It's more than all American consumers ever spent in a single year; it's larger than the total private investment of the last five yea..

"Gover ent is fast becoming the major enterprise of the American people. Government contracts will become more and more important to business firms.

"Military program, moveover, is to get three-fourths of this outlay. The total military commitment is put at 130 billion dollars in the period ahead.

"American business as well as the American people are going to have to adjust to a military state. **Arms industry is to be the biggest U. S. business.**

"Arms orders already are making an impression on business. They probably will amount to 53 billions in 1951 alone. That's nearly six times the volume of military orders placed in the June-November period of 1950.

"Biggest orders are to go to industries that produce and fabricate metals, that turn out finished armaments, that make machinery. Orders also will be large for textiles, shoes, chemicals and petroleum products.

"Government is to become the biggest customer of American business. The budget indicates that business will be paid 46 billion dollars in cash in the year

that begins next July 1st. That's twice the current cash outlay to business.

"Figures like these go to show just what the war program actually means.

"Arms program also points clearly to the prospect that inflation, swollen activity, is to be the major problem ahead. And the end is not in sight. Plans of Government call for as much or more spending in 1953 and 1954. **Businessmen might just as well forget the dangers of depression. It's not in sight at all.**"

(3) The President has declared it to be the policy of the United States Government to seek peace through force. In his inaugural address, January 20, 1949, this policy was defined as follows: "If we can make it sufficiently clear, in advance, that any armed attack affecting our national security would be met with overwhelming force, the armed attack might never occur".

More recently, the President has asserted the power by his arbitrary will to use the armed forces of the United States to stop "aggression". This policy has already led to the involvement of the United States Government in a foreign war in Korea.

In the Economic Report of the President transmitted to the Congress January 12, 1951, the President stated that the United States was pledged and determined to "check aggression and to advance freedom". This policy of using brute force to attain this aim is self-defeating. In Korea, it has brought about only the mass murder of innocent people.

The policy of maintaining or using armed force to meet aggression or to prevent aggression is indistinguishable from aggression. In the absence of any accepted or defined meaning of the term "aggression", the power asserted by the President is arbitrary and despotic. The United States Delegation at the San Francisco Conference

at which the United Nations Charter was written, opposed any attempt to define the word "aggression" upon the grounds that:

> "**There was no kind of act, defined as an act of aggression, which in conceivable circumstances might not be a legitimate act of self-defense.** Even with reference to the first item of the Bolivan list, invasion by armed force, it might be difficult to determine the invader if there had been provocation on one side which forced action by the other."
>
> (The United Nations Conference on International Organization-Documents, Volume 12, p. 341-2).

The policy of relying upon force does not make for peace—it makes for war. General Omar Bradley, Chief of Staff, United States Army, in an Armistice Day address on November 10, 1948, declared:

> "Armed forces can wage wars but they cannot make peace. For there is a wide chasm between war and peace—a chasm that can only be bridged by good will, discussion, compromise, and agreement . . ."

Instead of increasing the safety of us in the United States, this state of lawlessness renders us more insecure than we ever were before. The notice to the world by the head of the State that he has no faith in justice or law and that in the exercise of arbitrary, unrestrained powers, he is ready to release destructive forces on an unimaginable scale, engenders hatreds and resentments which eventually will engulf us.

(b) **The policy of the government in using war as an instrument for the attainment of its political aims, domestic and foreign, violates the United States Constitution.**

The Government of the United States was founded to establish tranquility, happiness and security of the people

living in this Federal union. It is a national and not an international government. It is one of limited and delegated powers.

The military commitments which the United States Government has taken on has put it in the role of an International Guardian. According to the statement made by Secretary of State Acheson before the Foreign Relations Committee in support of the North Atlantic Pact, one of the objects of the Pact was to make provision that: "Aggression cannot take place through internal disorders growing from the seed sown by a potential aggressor, or under the guise of border incidents."

The only pretense of constitutional authority to put into effect such a broad military program, is that the power is derived from Article I, Sect. 8, as being for "The common defense and general welfare of the United States". This claim has been used wherever the forces of totalitarianism have destroyed the democratic system.

It does not help to maintain that international conditions have created a situation of national concern. The Government of the United States was not designed as a buttress for the stability of foreign governments. The program of subsidizing and arming foreign governments by the use of the federal taxing power is as far removed from the objects for which the Government exists as the taking over of the function of municipal policing would be. The existence of such a power in the federal government is consistent only with the admission that the government is one of unlimited and despotic power.

In order to supply the European governments with money to carry out the policy of this government, to maintain and support their armies, and to rehabilitate areas destroyed as a result of this policy (such as Korea), the United States Congress must resort to the power to tax

the people of the United States. The Constitution confers no power to raise money for such an international scheme. It is as much beyond the power of Congress to launch a world wide program to check aggression and advance freedom, as it would be for it to take over agriculture, manufacturing, mining, banking, transportation, or intra-state trade within this nation.

In 1917-1918, American blood was shed in a war to end war and save democracy; in 1941-1945, American lives and wealth were sacrificed to remove the threat of arbitrary power; and now the government is adopting measures for the erection of a military overlordship over practically the entire world—the very antithesis of law and order!

II. Criminality of War Under International Law.

International law, or as it is sometimes called, the law of nations, has made great strides forward during the last quarter century. The circumstances under which national governments can now use force or the threat of force in their international relations, have been so closely restricted by the system of treaties that resort to violence or the threat of violence as a method for the settlement of international conflicts has become impossible without breach of treaty violation. Thus, international law has grown beyond the regulation of hostilities between the armed forces of nations to the interdiction of war itself.

A summary of those treaties, international laws and agreements which the government of the United States has become a party to or which it has recognized and pledged itself to respect and observe, and which consequently have become the supreme law of the land, follows:

(A) Kellogg-Briand Pact.

Prior to World War I, the United States and sixty-two other governments entered into a treaty by which they

condemned recourse to war for the solution of international controversies and renounced it as an instrument of national policy in their relations with one another and agreed that the settlement or solution of all disputes or conflicts which may arise among them should never be sought except by pacific means.

(B) Atlantic Charter.

Forty-seven governments, calling themselves the United Nations, subscribed to purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom, dated August 14, 1941, known as the Atlantic Charter. Among these common principles, upon which all people based their hopes for a better future for themselves and their children, were:

> "They believe that all of the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea, or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments."

This pledge by the governments was sealed by the shedding of blood by millions. Those surviving have the right to compel the faithful performance of these assurances by all of the members of the United Nations.

(C) United Nations.

By this Charter, the member governments:

a) declared that the peoples of the United Nations were determined to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights and in the dignity and worth of the human person, and to promote social progress and better standards of life in larger freedom;

b) pledged themselves to promote universal respect for, and observance of, human rights and fundamental freedoms for all and to take joint and separate action in cooperation with the Organization for the achievement of this purpose; and

c) agreed to bring about by peaceful means the adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

(D) International Military Tribunal.

In 1945, the governments of the United States, France, Great Britain and the Soviet Union, acting in the interests of all the United Nations established the International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis. Later upon invitation, the Charter of the Tribunal was adhered to by nineteen of the other United Nations. There is general agreement that its principles expressed the sense of the great majority of civilized peoples.

One class of crimes over which the Tribunal took jurisdiction was defined as follows:

> "Crimes against peace: Namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;"

By the Opinion and Judgment of the Tribunal, it was declared that:

> "The nations who signed the pact (Kellogg-Briand Pact) or adhered to it unconditionally condemned recourse to war for the future as an instrument of policy, and expressly renounced it. After the signing of the pact, any nation resorting to war as an instrument of national policy breaks the pact. In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact. As Mr. Henry L. Stimson, then Secretary of State of the United States, said in 1932:
>
> > "'War between nations was renounced by the signatories of the Kellogg-Briand Treaty. This means that it has become throughout practically the entire world . . . an illegal thing. Hereafter, when engaged in armed conflict, either one or both of them must be termed violators of this general treaty law. . . . We denounce them as law breakers.'"

III. The Fact That a Person Acted Pursuant to an Order of His Government, or of a Superior Does Not Relieve Him From Responsibility Under International Law, Provided a Moral Choice Was in Fact Possible to Him.

The General Assembly of the United Nations appointed an International Law Commission to "formulate the prin-

ciples of international law recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal". The above heading is Principle IV of the Report of the International Law Commission covering its second session, June 5-July 29, 1950. The Commission points out that the text is based on the principle contained in Article 8 of the Charter of the Nuremberg Tribunal as interpreted in the judgment. The Tribunal in its judgment declared:

> "It was submitted that international law is concerned with the actions of sovereign States, and provides no punishment for individuals, and further, that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected . . .
>
> ". . . Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.
>
> . . . . . .
>
> ". . . the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State if the State in authorizing action moves outside its competence under international law.
>
> "It was also submitted on behalf of most of these defendants that in doing what they did, they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by

them in carrying out these orders. The Charter specifically provides in Article 8:

"'The fact that the defendant acted pursuant to orders of his Government or of a superior shall not free him from responsibility . . .'

"The provisions of this Article are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

Not only were these principles affirmed by the United Nations by its resolution on December 13, 1946, but since that time the International Military Tribunal for the trial of the major war criminals in the Far East, has applied the same principles.

IV. Under the Fundamental Law of the United States, the Rights of Individual Conscience and Human Dignity Are Respected and the Individual Has the Choice to Refuse Complicity in the Crime of Preparing War.

The pertinent constitutional provisions are:

Constitution of the United States.

Amendment 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Constitution of Tennessee.

Article I, Section 1,

That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of those ends they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Article XI, Section 16,

The declaration of rights, hereto prefixed, is declared to be a part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the general powers of the government, and shall forever remain inviolate.

"Democracy maintains that government is established for the benefit of the individual, and is charged with the responsibility of protecting the rights of the individual, and his freedom in the exercise of his abilities."

(From President Truman's Inaugural Address, January 20, 1949.)

'Today, men feel more deeply than ever that all human beings have rights, and that it is the duty of government to protect them."

(From President Truman's speech on the occasion of the laying of the cornerstone of the U. S.

Courthouse for the District of Columbia, June 27, 1950.)

"The Fathers did not believe in the sovereignty of the State in the sense of absolute power, nor did they believe in the sovereignty of the people in that sense. The word, 'sovereignty' will not be found in the Constitution or the Declaration of Independence. They believed that each individual, as a responsible moral being, had certain 'inalienable rights' which neither the State nor the people could rightfully take from him."

(James M. Beck, The Constitution of the United States.)

"The essence of our system of democracy . . . has been the freedom of the individual as against the tyranny of government, and equality of rights among individuals. The essential test of man's security in that freedom and in that equality lies ultimately in the underlying conception of his relation to his government. Does that government exist for him as was announced in our Declaration of Independence? Can the individual man standing on his own right make secure his freedom by means of free speech, free discussion, a free press, and in the last resort by the invocation of the aid of an independent judiciary? Or, on the other hand, do all his rights come from his government and does his security depend solely upon the privileges which that government sees fit to grant him? These are the two essential conceptions of individual rights which have been fighting in this world during the past thousand years. They met on the battle front in the recent war and the issue was decided in favor of our system. We shall not reverse that decision."

(Henry L. Stimson, Democracy and Nationalism in Europe, 1934.)

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, **and other fundamental rights**, may not be submitted to vote; they depend on the outcome of no elections.

. . . . . .

"Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization.

. . . . . .

". . . freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

(Mr. Justice Jackson in West Virginia State Board of Education v. Barnette, 319 U. S. 623, 638, 641-2, 87 L. ed. 1628, 1638-39.)

"The struggle for religious liberty has through the centuries been an effort to accommodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State."

(Mr. Justice Douglas in Girouard v. United States, 328 U. S. 60, 68, 90 L. ed. 1084, 1090.)

Religious scruples against bearing arms have been recognized by Congress in all the conscription laws.

Annals of Congress (Gales), 1st Cong., Vol. I, pp. 434, 436, 729, 731; Vol. 2, pp. 1818-1827; Acts of Feb.

24, 1864, 13 Stat. at L. 6, 9, Chap. 13; Jan. 21, 1903, 32 Stat. at L. 775, Chap. 196; June 3, 1916, 39 Stat. at L. 166, 197, Chap. 134; May 18, 1917, 40 Stat. at L. 76, 78, Chap. 15; Selective Training and Service Act of 1940; The Selective Service Act of 1948.

The Supreme Court after a series of contrary decisions finally in 1946 held that the Congressional requirement in naturalization statutes that an applicant for admission to citizenship take oath to support and defend the Constitution and laws of the United States against all enemies does not operate to exclude from citizenship one unwilling to take up arms in the country's defense.

Girouard v. United States, 328 U. S. 61, 90 L. ed. 1084.

The line of supreme court decisions where questions of freedom and individual liberty have been involved demonstrate that "liberty" has a very wide meaning. Most of the rights and liberties which have been upheld have not been defined in exact and express terms in the Constitution, e. g.:

(a) The right of acquiring, possessing and protecting property is natural, inherent and inalienable.

Vanhorne v. Dorrance, 2 Dall. 304, 1 L. ed. 394.

(b) The right to work for a living in the common occupations of the community is of the very essence of personal freedom and opportunity.

Truax v. Raich, 293 U. S. 33, 36 S. Ct. R. 7, 60 L. ed. 131.

(c) Liberty means more than freedom from servitude and physical restraint. It means the right to be free in the enjoyment of his faculties as well.

Grosjean v. American Press Co., 297 U. S. 233, 56 S. Ct. 444, 80 L. ed. 660;

Allgeyer v. Louisiana, 165 U. S. 578, 17 Sup. Ct. Rep. 427, 41 L. ed. 832;

Butcher's Union, etc., v. Crescent City, etc., 111 U. S. 746, 4 S. Ct. Rep. 652, 28 L. ed. 585;

Smith v. Texas, 233 U. S. 630, 34 S. Ct. Rep. 681, 58 L. ed. 1129.

(d) It is the purpose of the First Amendment to the Constitution to reserve the sphere of intellect and spirit from all official control.

West Virginia State Bd. of Education v. Barnette, 319 U. S. 623, 87 L. ed. 1625.

(e) "Statesman, prelate and judge, Protestant, Catholic and Jew, are united in the conviction that the inalienable rights of the individual, formulated and assured by our law, rest upon a foundation eternal and immutable because it is divine. **There lies America's Unity.**"

Chief Judge Irving Lehman of the New York Court of Appeals speaking before the Association of the Bar of the City of New York, Oct. 28, 1941, on The Influence of Judge Cardozo on the Common Law.

V. Statement of Personal Conviction That Payment of Income Taxes Involves Guilty Complicity in Crime of Preparing War.

I believe and insist that the right, in obedience to the dictates of my own conscience, to refuse participation in war in any form, whether directly as a member of the armed forces, or indirectly through the payment of taxes to equip the armed forces and manufacture weapons and instruments of warfare, is one of the basic freedoms, inherent in the American democratic system; and is a right which no human authority, not the President nor the Con-

gress of the United States, can interfere with or control. The denial of this right would be totalitarianism.

I feel that I am under a moral duty to respect the right of all other persons, in whatever country they may happen to live, to life, liberty and happiness as I respect my own right to the enjoyment of these blessings. I claim the freedom for myself and my children for the development of our faculties through the practice of kindliness, brotherhood and mutual aid towards all persons. For me to submit to being coerced into feeding the flames of hatred, fear, intimidation and terror and thereby very possibly hastening the annihilation of any life on earth, would be to submit to the indignity of becoming *particeps criminis* in a design for human butchery.

By the universally recognized principle of Nuremberg, the fact that a person acts pursuant to orders of his government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him. I have decided to free myself from responsibility for complicity in the crime by taking the choice which is not only moral but which I believe is legal under the fundamental law of this republic.

It has been the blind obedience of the citizens to national law which have enabled the leaders of governments to organize all the wars of modern times. All of the war planning, like the current planning in the United States, started as preparations for defense against war plans of enemies, actual or potential.

I cannot help but believe that we, as a nation, must be in deep wrong if it is necessary for us to mobilize all our physical resources for war—even though it may be defensive—against half of the human race. We have called ourselves a Christian nation. The Supreme Court has said we were that. Christian nations do not drop bombs on women

and children. My conscience approves the following statement by Justice William O. Douglass:

> "Absolute sovereignty, complete self-determination are outmoded in this atomic age. No nation-state can today be strong enough to protect its people against war. Absolute sovereignty on the part of any nation bent on world domination might now be the doom of civilization itself.
>
> "The traditional methods of settling controversies between nations become more and more outmoded with the passing of the years. The clash of sovereignties fans the flames of nationalism. Fear and suspicion, wariness and hate, are the result. That path has always led to war. And, to repeat, the atomic bomb and the rocket may now destroy the nation that uses them as well as those against whom they are used.
>
> "We are apt to think of peace as the absence of war. But peace is more than that. Peace is the presence of law—of justice, order stability, and a method for orderly change. This is to say, peace is not merely the absence of war; it is the presence of government.
>
> "World law is essential for world peace. The risks are far too great for us to entrust the cherished ideals of this great civilization to jungle techniques."

I do not believe in the inevitability of human degradation and war. To the contrary, I believe in the infinite capacity of mankind for progress and improvement, not only materially but also intellectually, morally and spiritually. I am manifesting this faith by devoting my life to the abolition of war and the creation of new institutions of world government based on the principles of individual liberty. The people of the State of Tennessee have elected me as one of their delegates to the People's World Constituent Assembly to formulate the constitutional basis for world order under world law.

I stand upon all the rights and privileges guaranteed to me as an individual citizen by the Declaration of Independence, the Bill of Rights of the Constitution of the United States, the principles of international law which are a part of the law of the land, and especially upon the Constitution of the State of Tennessee. I call your attention to the provision in the Declaration of Rights of the latter:

> ". . . that no human authority can, in any case whatever, control or interfere with the rights of conscience;"

VI. Consistency of Opposition to War.

1. In 1945, drafted proposals for a constitution for the United Nations. These proposals were printed and mailed to all of the delegates of the governments and all of the observers attending the United Nations Conference at San Francisco.

2. On October 11, 1945, had personal interview with President Harry S. Truman at the White House urging him to take world leadership in proposing world federal government.

3. In December, 1945, introduced a resolution before the American Bar Association at its annual convention at Cincinnati, Ohio, favoring the transformation of the United Nations Organization into a world federation.

4. In December, 1946, quit the active practice of law in Nashville to devote full time to working for the establishment of world federal government.

5. In 1948, prepared a plan for representation of the people of the United States in a World Constituent Assembly through the popular election of delegates.

6. On June 3, 1948, sent a letter to President Truman and Premier Stalin urging both of them to support this plan to let the people render decision against war.

7. In 1948 and 1949, promoted adoption of a law in Tennessee for implementation of this plan. The plan was printed in Tennessee Law Review in December, 1948, and the law was enacted by the 1949 General Assembly of Tennessee in April, 1949.

8. On Tuesday, May 17th, 1949, testified before the Committee on Foreign Relations of the United States Senate in the hearings on the North Atlantic Pact, in opposition to the Pact. (Hearings, part 3, Private Witnesses, May 12, 13, 16, 17, and 18th, 1949.)

9. Spent the months of September, October, November, December, 1949, in Europe promoting the popular election of delegates to the World Constituent Assembly to meet in first session in Geneva, December 30, 1950.

10. March 10-12th, 1950, attended People's World Convention Planning Conference at Ghent, Belgium, and was elected a member of the People's World Convention Executive Committee on Arrangements for the People's World Convention in Geneva, 1950.

11. On August 3, 1950, elected by popular vote in Tennessee, one of the three delegates to the World Constituent Assembly (People's World Convention) at Geneva, December, 1950. Received 117,000 votes in this election.

12. December 30, 1950—January 6, 1951, attended opening session People's World Constituent Assembly at Geneva, Switzerland. Elected president of People's World Constituent Assembly Continuation Committee.

13. Wrote statement of Guiding Purposes and Principles of the World Constituent Assembly.

Documents, reports and other paper writings evidencing the activities mentioned are annexed hereto and made a part hereof.

Respectfully submitted,

Fyke Farmer.

Civil Action No. 1685.

NOTICE.

(Filed April 24, 1953.)

To the Defendants, J. M. Rountree, Frank Taylor and First National Bank, Springfield, Tennessee.

You and each of you are hereby notified that I will on Monday, the 27th day of April or as soon thereafter as the Court will hear the motion, apply to the Honorable Elmer D. Davies, District Judge, for an order allowing the tender of one-third of the amount of the income tax assessment against me with interest to be made in accordance with the prayer of the complaint and also for a temporary injunction or restraining order in accordance with the prayer of the complaint.

This April 24, 1953.

Civil Action No. 1685.

MOTION TO DISMISS.

(Filed June 25, 1953.)

J. M. Rountree, Director of Internal Revenue for the District of Tennessee and Frank Taylor, Deputy Collector of Internal Revenue by A. O. Denning, United States Attorney for the Middle District of Tennessee, their attorney, move to dismiss this action upon the following grounds:

Answer and Counterclaim Nature of Interpleader

I.

That this is a suit for declaratory judgment with respect to an internal revenue tax of which this Court is without jurisdiction under 28 U. S. C. 2201.

II.

That this Court is without jurisdiction of this action because it is a suit to enjoin the collection of internal revenue taxes the maintenance of which is prohibited by Section 3653, Internal Revenue Code.

III.

That this Court is without jurisdiction because the complaint does not state a case or controversy within the jurisdiction of the District Court under Article III, Section 2 of the Constitution of the United States.

IV.

That the complaint fails to state a claim upon which relief can be granted.

A. O. DENNING,
United States Attorney,
Attorney for Defendants.

June 24, 1953.

Civil Action No. 1685.

ANSWER AND COUNTERCLAIM NATURE OF INTERPLEADER.

(Filed July 9, 1953.)

Defense.

1. The defendant, First National Bank, Springfield, Tennessee, is without sufficient information to form a belief

as to paragraphs numbered I, II, IV, V, VI, VIII, IX, and X of the complaint.

2. The defendant, First National Bank, Springfield, Tennessee, admits the allegations of paragraph numbered III of the complaint.

3. The defendant, First National Bank, Springfield, Tennessee, is without sufficient information to form a belief as to the first two sub-paragraphs of paragraph numbered VII of the complaint and said defendant admits the third sub-paragraph of paragraph numbered VII of the complaint.

Counterclaim for Interpleader.

1. Defendant, First National Bank, Springfield, Tennessee, received the sum of $6750.00 as an escrow deposit from the plaintiff, Fyke Farmer.

2. The defendant, J. M. Rountree, has demanded the payment of $5,527.27 to him by virtue of a Tax Levy and Warrant for Distraint, which was issued on April 23, and 22, 1953, respectively and served on this defendant by the defendant, Frank W. Taylor, a copy of said levy and warrant for distraint are attached hereto and made a part thereof.

3. The defendant, J. M. Rountree, made further demand for said payment of this defendant by a Final Notice and Demand dated May 1, 1953, a copy of which is attached hereto and made a part hereof.

4. Plaintiff, Fyke Farmer, has notified this defendant that he claims said tax claim and levy is not valid, and that he holds this defendant responsible for said escrow deposit.

5. This defendant has no claim to the deposit and claims no interest therein.

Wherefore defendant, First National Bank, Springfield Tennessee, demands:

1. That the court order the plaintiff and the defendant, J. M. Rountree, Director of Internal Revenue, to interplead their respective claims.

2. That the court adjudge whether the plaintiff or the defendant, J. M. Rountree, Director of Internal Revenue, is entitled to the sum of money.

3. That this defendant be allowed to pay the money in said escrow deposit into the registry of the court, that the court discharge this defendant from all liability in the premises and that thereafter this defendant be dismissed from the suit.

4. That the court award to the defendant its costs and attorney's fees.

(s) DICK L. JOHNSON,
OSBORN, JOHNSON & DAVIES and
JOHN SPROUSE,
Attorneys for Defendant First National Bank of Springfield.

Civil Action No. 1685.

MOTION TO STAY TAKING OF DEPOSITION.

(Filed July 17, 1953.)

J. M. Rountree, Director of Internal Revenue for the District of Tennessee, and Frank Taylor, Deputy Collector of Internal Revenue, defendants above-named, by A. O. Denning, United States Attorney for the Middle District of Tennessee, their attorney, move the Court to stay the taking of the deposition of Harry S. Truman pursuant to notice served upon the defendants by plaintiff on July 7,

1953, until twenty days after determination of their motion to vacate the said notice of deposition filed herein this date.

Civil Action No. 1685.

MOTION TO VACATE NOTICE TO TAKE DEPOSITION.

(Filed July 17, 1953.)

J. M. Rountree, Director of Internal Revenue for the District of Tennessee, and Frank Taylor, Deputy Collector of Internal Revenue, defendants above-named, by A. O. Denning, United States Attorney for the Middle District of Tennessee, their attorney, move to vacate and set aside the notice of taking the deposition of Harry S. Truman of Independence, Missouri, served on them on July 7, 1953, by the plaintiff, upon the following grounds:

1.

That the said notice to take the deposition of the former President of the United States is served by the plaintiff with the sole purpose and intent of achieving notoriety and publicity; that the said Harry S. Truman has no knowledge or information whatsoever regarding the tax liability of the plaintiff involved in this action; that the official acts of said Harry S. Truman complained of in the said complaint are matters of record; and that the acts and communications of said Harry S. Truman during his term of office as President of the United States are unqualifiedly privileged.

2.

That the defendants, in the alternative, move that if the Court finds that the deposition of said Harry S.

Truman be taken it should only be taken upon written interrogatories so that it can be limited to matters which are not privileged as state secrets.

3.

That the defendants, again in the alternative, move that if the Court allows the deposition of Harry S. Truman to be taken either by oral examination or by interrogatories, that the Court enter an order postponing the taking of such deposition until after the Court hears and decides the defendants motion to dismiss on the ground that if the motion is granted it will be apparent that this entire action is frivolous and that all witnesses or proposed witnesses should be protected by this Court from annoyance, embarrassment or oppression; and on the further ground that it cannot be determined before the Court's action on the said motion to dismiss what matters should not be inquired into.

Civil Action No. 1685.

PLAINTIFF'S OPPOSITION TO MOTIONS TO STAY TAKING OF DEPOSITION AND TO VACATE NOTICE TO TAKE DEPOSITION.

(Filed July 20, 1953.)

The Government's motions to stay the taking of the deposition of Mr. Truman fail to show any cause for this Court to order that the deposition shall not be taken or shall be stayed or shall be taken only on written interrogatories as the Court is authorized to do by Federal Rule of Civil Procedure 30 (b).

Plaintiff respectfully insists that he has a right to proceed with the oral examination of the witness under and

in pursuance of the notice to take his deposition served upon the District Attorney on July 7, 1953. He submits that the Government having waited for ten days after the notice was served saw no cause to object to the taking of the deposition until the witness employed counsel in Kansas City, where he was subpoened to appear for examination and began to try to avoid giving the deposition and producing the documents called for by the subpoena duces tecum. After the United States District Court for the Western District of Missouri had made an order staying compliance with the subpoena duces tecum and setting the hearing on the motion of the witness before that court on Monday, July 20, 1953, at 10:00 o'clock A. M., the Government filed these motions to give him support. Plaintiff therefore, says that the motions in this court are not seasonably made for this court to take jurisdiction to stay the taking of the deposition or to direct that it shall be taken only on written interrogatories.

The fact that the Government elected to make its defense to plaintiff's action by motion to dismiss instead of answer does not deprive plaintiff of the rights conferred upon him as plaintiff in this action by the Federal Rules of Civil Procedure, and particularly by Rule 26. This rule provides that any party may take the deposition of "any person" by deposition upon oral examination or written interrogatories "for the purpose of discovery or for use as evidence in the action or for both purposes." Twenty days having elapsed after the commencement of the action, plaintiff's right to take depositions without leave of court had accrued when the notice to take the deposition was served. **Stover v. Universal Moulded Products Corp.** (D. C. Pa. 1950), 11 F. R. D. 90.

Originally Rule 26 provided that depositions without leave of court could only be taken after an answer had

been served. The amendments changed the rule so that now after 20 days have elapsed from the commencement of the action, depositions may be taken without leave, even though the defendant has not answered. In Prinias v. Andreadis, Judge Winfeld so held, saying:

> "The further contention that the notice is ineffective because the defendant has not yet answered is equally without merit."
>
> **Prinias v. Andreadis**, 12 F. D. R. 490.

Rule 26 (b) provides that:

> "It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence."

The same Rule provides that the deponent may be examined "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim of the examining party" or to the defense of the defendant. And by Rule 26 (d) it is provided that the deposition may be used at the trial "or upon the hearing of a motion or an interlocutory proceeding" so far as it may be admissible under the rules of evidence.

Plaintiff desires to take the deposition of the witness Harry S. Truman for use not only at the trial but also upon the hearing of the Government's motion to dismiss. Also as stated in the notice to take the deposition served by plaintiff he wishes to take the deposition of the witness for the purpose of discovery. Plaintiff attaches hereto and makes a part hereof an affidavit in which he shows to the Court that it is his purpose to examine the witness regarding matters not privileged which are relevant to the sub-

ject matter involved in the pending action. Plaintiff further submits that this affidavit shows that the examination of the witness will not be merely perfunctory and he is entitled to the full scope of inquiry upon oral examination.

In **Worth v. Trans World Films, Inc.**, 11 F. R. D. 197, the rule on this subject was declared as follows:

> "With respect to the alternative request that the deposition be taken only on written interrogatories, the advantages of oral examination over the rigidity of written interrogatories are fully acknowledged. Cross-examination of a witness who may be evasive, recalcitrant or non-responsive to questions is an essential in ferreting out facts, particularly of an adverse party or witness. The affidavit submitted on behalf of the defendant indicates that the proposed examination will be far from a perfunctory one and no reason has been submitted why full scope of inquiry should be proscribed in this case."

The witness and the government will be fully protected from the disclosure of any matter that may be privileged by the authority conferred upon the district court in which the deposition is to be taken, as provided by Rule 30 (d). In fact the district court in Kansas City has already caused an order to show cause to be served on plaintiff requiring him to appear in court at 10 o'clock A. M. on Monday, July 20, 1953, and show cause why the motion of Mr. Truman to quash the subpoena duces tecum should not be granted.

Attached hereto is a copy of the notice to take the deposition which was mailed by plaintiff to the United States District Attorney at Nashville on July 6, 1953, and was received by him on July 7, 1953.

Inasmuch as plaintiff will appear before the United States District Court for the Western District of Missouri

at Kansas City at 10 o'clock A. M. on Monday, July 20th, 1953, for the hearing on the notice to show cause served on him by the attorney for the witness, Mr. Truman, prior to the time he was served with the notice of the District Attorney for the Middle District of Tennessee that he would present the Government's motions to this Court at 9:30 A. M. on Monday, July 20th, 1953, plaintiff asks that this written response and opposition to said motions be considered by this court at the hearing of said motions and that said motions be overruled and denied or else continued until such time as plaintiff is able to appear in person to argue same before this court upon oral argument.

Civil No. 1685.

MOTION.

(Filed July 21, 1953.)

Comes the defendant, First National Bank of Springfield, Tennessee, by its attorneys, John D. Sprouse and Dick L. Johnson, and moves the Court that it be allowed to pay into the registry of the Court the sum of $6,750, which it is holding and that thereafter this defendant be dismissed from the cause with its cost and attorneys' fees.

Civil No. 1685.

REPLY OF FYKE FARMER TO COUNTERCLAIM OF FIRST NATIONAL BANK, SPRINGFIELD, TENN.

(Filed August 5, 1953.)

For answer and reply to the counterclaim filed by First National Bank, Springfield, Tennessee, in the nature of an interpleader, Plaintiff, Fyke Farmer, says:

There was no valid levy on the deposit account in the First National Bank. The Deputy having the warrant of distraint, so far as appears from the answer and counterclaim of the bank, merely gave a notice of the claim for the taxes which was followed by a demand after this action was commenced. This under the decision of the Sixth Circuit Court of Appeals in the case of U. S. v. O'Dell, 160 F. 2d 304, is insufficient to amount to a levy.

The return of the Deputy Director on the warrant of distraint does not appear. Respondent avers that at the time of the notice upon the bank, the lien of the government was duly of record and covered unincumbered real estate, the title to which was vested in plaintiff, the value of which was more than sufficient upon levy and sale to satisfy the amount of the assessment with interest and the officer did not first attempt to collect the assessment from the real estate, although plaintiff informed the deputy collector of this real estate and pointed out to him before the attempted levy on the deposit.

Plaintiff insists that the Director of Internal Revenue has no claim to the deposit.

Plaintiff further says that no grounds for an interpleader exist and he denies that the bank is entitled to costs and attorney's fees out of the deposit.

Plaintiff submits to the Court that if the interpleader should be sustained, he would be entitled to have the order directing the payment of the deposit into the registry of the court direct the release of the lien upon the remainder of plaintiff's property because the fund would be more than sufficient to pay the amount of the assessment with interest.

Civil Action No. 1685.

ORDER CONTINUING HEARING.

(Filed July 23, 1953.)

By consent of the parties,

It is ordered by the Court that the hearing on the defendants' motion to vacate notice to take the deposition, and motion to stay the taking of the deposition of Harry S. Truman, be and hereby is continued until such time as either of the parties may apply to the Court for a hearing on said motions.

Done and ordered in open court this the 23rd day of July, 1953.

Civil Action No. 1685.

PLAINTIFF'S CONSENT TO PAYMENT OF FUNDS INTO COURT BY FIRST NATIONAL BANK OF SPRINGFIELD AND MOTIONS WITH RESPECT TO HEARING.

(Filed August 5, 1953.)

Plaintiff, Fyke Farmer, consents to the payment into the registry of the Court by the defendant, First National Bank of Springfield of the deposit of $6,750 in accordance with Rule 67 of the Fed ral Rules of Civil Procedure, or such part of said deposit as the Court may deem necessary and sufficient to stand in lieu of bond for the assessment against him with interest and costs, the question of the allowance of attorney's fees out of said fund to be determined by the court; and further tenders to the defendant, J. M. Rountree, Director of Internal Revenue or other authorized official of the government $1952.16 (or

whatever sum upon proper computation is one-third of the amount of the assessment with interest to August 5, 1953) upon the condition however that said sum be deposited and held in a special account in the Treasury so that same shall not be subject to be appropriated by the Congress or expended for the planning, preparation, initiation or waging of war, but shall be available only for the support of the lawful and constitutional functions of the federal government, the amount of such tender, if accepted, to be paid by order of court out of said deposit in the registry of the court. Plaintiff further moves that the order directing the payment of the fund into the registry of the court by the First National Bank of Springfield specify and provide that acceptance of said tender shall be made by service of written notice upon plaintiff within 10 days or other reasonable period after the payment of the fund into the registry of the court.

Plaintiff further moves for leave of court to file the Amendments to the Complaint heretofore filed on July 31, 1953 but returned to plaintiff by the Clerk of the Court on August 3, 1953 stating as the reason that after an answer has been filed, an amended pleading cannot be filed unless an order is signed by the Court.

Plaintiff further moves the Court as follows:

1. To deny the motions of the defendants, J. M. Rountree, Director of Internal Revenue, and Frank Taylor, Deputy Collector of Internal Revenue to stay the taking of the deposition of Harry S. Truman and to vacate the notice to take the deposition of Harry S. Truman and to continue the hearing on the motion of said defendants to dismiss this action until the interrogatories filed herein have been answered by Herbert Brownell, Jr., Attorney General of the United States have been answered and plaintiff has thereafter had a reasonable time to examine the said Harry

S. Truman under the notice to take his deposition previously served upon the defendants and the subpoena duces tecum served upon the said Harry S. Truman.

2. To continue the hearing on the motion of the defendants to dismiss this action to allow plaintiff a reasonable opportunity to obtain affidavits or depositions or evidence upon interrogatories and to discover evidence which plaintiff desires to present at the hearing of the motion to dismiss on the question of the ability of the government to pay back taxes and revenue illegally exacted to pay for the preparing, planning, initiating and waging of war for aggression or in violation of international treaties, agreements or assurances contrary to the Nuremberg International Law and the Constitution and law of the land of the United States.

State of Tennessee }
County of Davidson } ss

Affidavit of Fyke Farmer in Support of Motions for Continuance of Hearing on Motion to Dismiss.

Fyke Farmer, the plaintiff in this action, makes oath as follows:

That on July 20, 1953, Judge Albert J. Ridge, United States District Judge for the Western District of Missouri, after a hearing in Kansas City made an order quashing a subpoena duces tecum duly and regularly served upon the witness, Harry S. Truman, named in plaintiff's motion, and also stayed the taking of the deposition of the said Harry S. Truman until the ruling of this Court on the motions filed in this Court by the government to stay the taking of the deposition and vacate the notice to take said deposition. After said order was entered on July 20th, 1953, plaintiff filed a motion to vacate and set aside the order quashing

the subpoena duces tecum and for a reconsideration and rehearing of the motion to quash and subsequently filed a supplemental motion for rehearing raising additional grounds for vacating the order quashing the subpoena duces tecum. Judge Ridge on July 27, 1953, made an order on application of the said Harry S. Truman allowing him until August 5, 1953, in which to file suggestions in opposition to plaintiff's motions for reconsideration and rehearing of the order of July 20, 1953.

Plaintiff shows to the Court that the records and documents which he sought to obtain from former President Truman and the facts which he expected to prove by examining him are relevant and pertinent to the motion to dismiss and he will be prejudiced by a hearing on said motion before he has had reasonable opportunity to obtain such evidence. The evidence sought to be obtained is relevant to the allegations contained in Section V of his complaint. It will substantiate plaintiff's contention in this action that at least two-thirds of the federal revenue for some years past and still is being expended, not for any lawful, constitutional purpose or object, but for a wholly illegal, unconstitutional and unlawful scheme of planning, preparing, initiating and waging a war or wars of aggression. It is very pertinent to plaintiff's case to discover the facts regarding the orders and directives made by former President Truman for the participation of the United States forces in the Korean war. The orders so far have not been made a public record. Plaintiff, notwithstanding the exercise of due diligence, since he attempted to obtain copies of the orders by his subpoena duces tecum served upon the former President has still been unable to ascertain where said orders or copies thereof are located. The secrecy about these orders is of itself evidence of their illegal and unlawful character and appears in sharp and strange contrast to the protection intended to be

given to the people against being involved in war except that the Congress shall first declare that it is necessary for the defense of the United Staes.

Plaintiff adopts and makes a part hereof each and every statement made and contained in the affidavit filed by him on July 20, 1953, in this Court in opposition to the government's motions to stay the taking of the deposition of Harry S. Truman and vacate the notice to take his deposition.

Plaintiff attaches hereto and makes a part hereof copies of the proceedings before Judge Albert J. Ridge on the motion of Mr. Truman to quash the subpoena duces tecum and will supply a duly certified copy of such proceedings.

Plaintiff also attaches hereto and makes a part hereof a copy of the New York Times for Friday, July 31, 1953, containing a report of a news conference given by George M. Humphrey, Secretary of the Treasury, describing the embarrassed condition of the Treasury arising from Congress having appropriated more money than could be raised by existing taxes and through borrowing within the ceiling on the public debt. The Secretary also, according to the press account of his interview, emphasized that it is impossible to reduce spending because of commitments "made in the past years" that are just now becoming due.

It is plaintiff's understanding that those commitments made in prior years referred to by the Secretary are appropriations for military uses made in violation of the constitutional prohibition against appropriating money for the military for a longer term than two years and the newspaper article substantiates the allegations with regard to this constitutional violation contained in Section X of the complaint filed by plaintiff and elaborated on in the amendments to the complaint which he now presents to the court and moves for leave to file.

The foregoing matter relating to the condition of the Treasury of the United States is material and pertinent to plaintiff's insistence that he has no plain, adequate, and speedy remedy at law to obtain repayment of that portion of the assessment representing appropriations for the illegal purposes and schemes set out in his complaint and the amendments to the complaint by a suit or action at law to recover the part of the tax illegally exacted from him.

Plaintiff will promptly file requests for admission or take steps to discover the material facts regarding this matter and present the same at the hearing by depositions or interrogatories. He prays that a reasonable opportunity be given to him to properly prepare for the hearing on the motion to dismiss as provided by Rule 12 (b) and Rule 56 (b), (c) and (f).

FYKE FARMER.

Sworn to and subscribed to before me this August 4, 1953, at Nashville, the County of Davidson, and the State of Tennessee.

L. B. ORMES,
Clerk, U. S. District Court,
By GUY W. COOPER,
District Clerk.

(Seal)

Civil Action No. 1685.

AMENDMENTS TO COMPLAINT.

(Filed Aug. 5, 1952.)

The plaintiff, Fyke Farmer, amends his Complaint in the following respects:

I.

As a more particular statement of the matters set forth in Paragraph V of the Complaint, plaintiff states:

Amendments to Complaint

The policy of using force and threats of force against other governments and peoples of foreign countries was by the President, in various policy statements, and by the Congress in the preamble to various acts adopted to carry out the policy, was termed the checking, suppressing, preventing or repelling aggression, both internal and external.

Prior to the formulation of the policy and its expression in the above terms, President Harry S. Truman, commencing with his impromptu press conference at Reelfoot Lake near Tiptonville, Tennessee, on October 8, 1945, declared to the world that the United States Government would never reveal the secret processes for the manufacture of atom bombs, but would endeavor to keep the atom bomb as a military secret, for all time. In announcing this policy the President rejected the advice of Secretary of War Stimson of his Cabinet, who in a memorandum to the President dated September 11, 1945, had urged the necessity for immediate negotiations between the President and the Soviet Union for the control of atom bombs. President Truman's Reelfoot Lake declaration was followed by a formal foreign policy statement made in his Navy Day speech in New York on October 27, 1945. In this speech the President declared to the world that the United States would not disarm but would endeavor to maintain such a state of military supremacy that it would be able to impose its will on the world. This force doctrine was described as having as its object the keeping of peace through military strength.

In subsequent public utterances and statements President Truman reiterated this policy of planning and preparing for the use of force to impose the will of the United States Government externally on other nations and peoples. In 1946 a proposal for the international control of atomic energy was formally submitted to the United Nations organization by representatives appointed by Presi-

dent Truman. This proposal has not been accepted by other nations, and particularly by the Soviet Union, because of an unfair condition that was attached to it. Although expressing a willingness to submit to a certain control by an international administrative body responsible to the United Nations organization, the plan submitted, generally called the Baruch Plan, distinctly provided that the United States would not cease making atom bombs or put its stock of atom bombs under control, or destroy any of the bombs it possessed until an effective system of control had been established and it had been **proven** that the system was workable. Inasmuch as at the time of the submission of this proposal the United States was the sole possessor of atom bombs, the condition that it would not cease the manufacture of bombs until the control system was established by international action completely nullified the offer or proposal for international control.

At the same time that this proposal was being submitted to the United Nations the United States Government, under the order of President Truman, was frantically engaged in the accumulation of a stock of atom bombs. The practical effect of the United States proposals for international control was to render the formal discussion and the debate in the United Nations little more than mere propaganda presentations which accentuated rather than relieved the growing tensions between the blocs of nations in the United Nations organization.

This doctrine of preventing and suppressing aggression, internal and external, received its first significant formulation in a line of practical action when President Truman arbitrarily and without any constitutional or statutory authority, ordered the furnishing of military aid to the governments of Greece and Turkey in March, 1947. With the adoption of the so-called North Atlantic Treaty in 1949,

the policy of the United States Government involving the use of force and threats of force in international relations revealed its inherently aggressive character. Although the Treaty was so phrased as to indicate a purely defensive intent, in the proclamations of the President and official statements of other heads of the Government explaining the aims of the organization, it was stated that the object of the military alliance and the accumulation of the means of warfare at its disposal was the suppression of aggression in any part of the world. The term "aggression" has never been given any judicial or legal meaning.

At the San Francisco Conference, at which the United Nations Charter was adopted, the United States delegation opposed any attempt to define "aggression." At practically every session of the Assembly of the United States proposals for the definition of "aggression" have been advanced and have been the subject of consideration by various special commissions, such as the International Law Committee, but still the concept of aggression remains undefined. It has been the consistent policy of the United States, under the direction of President Truman in pursuance to the authority conferred upon him by Congress by the United Nations Participation Act, to oppose any attempt to define "aggression."

In the execution of this policy of the use of military force by the United States for the checking, preventing, suppression, repelling, aggression, both internal and external, all over the globe, the Congress enacted a comprehensive system of laws and appropriated many billions of dollars for expenditure under the direction of the President. American military force was extended in Europe, Africa, Asia and parts of the Far East by means of a system of military aid pacts or treaties between the United States Government and other governments, which received grants of American money and arms.

This situation which developed, namely, with the President of the United States having subject to his order, the means of warfare in most of the areas of the world available for use according to no definite policy, resulted in the assumption by the President of arbitrary power.

The culmination of the policy of repelling aggression, both internal and external, was the intervention of the United States Armed Forces in Korea, under presidential orders given by President Truman without any declaration of war by Congress, and in violation of statutes by which the Congress had placed express restrictions upon the executive power for the use of the Armed Forces, to-wit:

The United Nations Participation Act adopted December 20, 1945 (Public Act, Chapter 583, 59 Stat. 620), by which statute Congress authorized the President to negotiate a special agreement with the Security Council, to be subject to the approval of Congress, providing for the numbers and types of armed forces to be made available to the Security Council, and further providing that nothing contained in this Section of the law "shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities or assistance in addition to the forces, facilities and assistance provided for in such special agreement or agreements."

No special agreement with the Security Council was ever negotiated and none was approved by the Congress. Therefore, the commitment of the American armed forces in Korea solely by presidential order, without any prior authorization from Congress, was in plain violation of the aforesaid statute.

"It shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or

otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding $10,000 or imprisonment not exceeding two years or by both such fine and imprisonment (June 18, 1878, c. 263, Sec. 15, 20 Stat. 152).

(Title 10, U. S. C., Sec. 15.)

"Sec. 960. **Expedition against friendly nations.** Whoever, within the United States, knowingly begins or sets on foot or provides for or prepares a means for or furnishes money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than $3,000 or imprisonment not more than three years, or both. June 25, 1948, c. 645, 62 Stat. 745."

(Sec. 960, Title 8, U. S. C.)

Terming the outbreak of hostilities between the armed forces of the Government in South Korea and the North Korean Government "an aggression", President Truman, in June, 1945, made orders, written or verbal, directing the shipment of United States arms and means of warfare to be sent in support of the South Korean government and subsequently commanding the Army, Navy and Air Force to engage in war in Korea. Plaintiff has been unable to ascertain by the exercise of due diligence the exact dates of said orders, or whether the same were written or verbal. Since the filing of the Complaint, he has en-

deavored to take the deposition of former President Harry S. Truman, for discovery, or for use in evidence in this action, or for both purposes. He caused to be issued a subpoena duces tecum calling for the production by said Harry S. Truman of certain records and documents, which would prove the foregoing allegations in this Amendment, and in particular called for the following:

> Copies of all orders made as President of the United States and as Commander-in-Chief of the Army and Navy for the use of the armed forces of the United States in Korea or in the general area of China or Formosa prior to June 27, 1950.

Mr. Truman filed a motion to quash this subpoena duces tecum, and at the hearing of said motion before the Honorable Albert A. Ridge, Judge of the United States District Court for the Western District of Missouri, on July 20, 1953, submitted an affidavit that the above mentioned documents were not "within or subject to his control". On this showing of non-availability Judge Ridge entered an order quashing the subpoena duces tecum. Plaintiff has sought to obtain information from the executive offices of President Eisenhower of the White House as to the location of the copies of said orders but so far has received no reply to his request for such information.

On the basis of press reports, plaintiff avers that an order was given by President Truman directing Armed Forces of the United States, under the command of a General of the Army, Douglas C. MacArthur, to engage in the Korean war on the side of the forces of the South Korean government, on the night of June 26, 1950. Whether or not previous orders were given by the President directing active military intervention by the United States forces in Korea, plaintiff does not know. On the basis, however, of press dispatches immediately after the outbreak of

hostilities in Korea on June 24th or June 25th, 1950, plaintiff avers that the United States Government violated a resolution which it had procured from the Security Council of the United Nations on June 25, 1950, for the purpose of bringing about a cease fire in Korea. The Security Council resolution adopted on June 25, 1950, called on both sides of the conflict to immedately cease firing, and called on all members of the United Nations organization to support its resolution. The United States Government ignored and violated this resolution, which it had sponsored, by encouraging the South Korean government not to heed the cease fire and by supplying the South Korean government with the military means for continuing warfare in violation of the cease fire resolution.

While engaged in this violation of the cease fire resolution of June 25th, President Truman, twenty-four hours before the adoption of the resolution recommending to members of the United Nations to furnish assistance to the South Korean government, in usurpation of the powers conferred upon him by the Constitution of the United States, and in violation of the restrictions of the statutes above set out, gave the orders committing the United States Armed Forces to the Korean War. On the dates mentioned above the United States was at peace with the whole territory of Korea, both North and South, and with all of the people of Korea. The intervention by military force in the Korean war on the side of the government of the South against the government of the North under these circumstances amounted to a violation of the statutes above mentioned, and, also, amounted to the initiation and waging of a war of aggression as defined by the Nuremberg International Law.

Plaintiff avers that all of the orders given by President Truman for the initiation and waging of said war were

illegal and unconstitutional, and that for any individual citizen of the United States to assist in the conduct of such war would amount to complicity in the commission of a crime against peace within the definition of the Nuremberg law.

President Truman and high officials in the government of the United States induced the American people to accept the military intervention in Korea by falsely calling the war a "police action" and by concealment of the material facts pertaining to the outbreak of the hostilities.

The President and the Secretary of State, Dean Acheson, represented that the North Korean forces suddenly and without any provocation attacked the South Korean forces on June 25, 1950, and called this an "aggression". They omitted to inform the American people that the South Korean government refused to negotiate with leaders of the North for peaceful unification of the nation and were supported in this refusal by the supply of arms and economic aid, although the President and responsible authorities of the United States Government well knew that such refusal by the South to negotiate would inevitably result in a disastrous civil war.

The United States had no legitimate interests in Korea. Its only obligation to the people of Korea was to fulfill the assurances during the war by the Cairo and Potsdam Declarations that after the overthrow of the Japanese militarists, Korea would be given its freedom and independence. These assurances were violated by the establishment of a military government by the United States government over that part of Korea south of the 38th parallel and the continued military occupation of the South until the establishment of the puppet regime under the head of Syngman Rhee. The Rhee regime from 1948 until the conflict broke out in June, 1950, was maintained as a

corrupt and brutal police state through military and economic support from the United States until the defeat of the Rhee party at the May, 1950, election.

Then the U. S. State Department sent Mr. John Foster Dulles on a mission to Korea in June, 1950, to prevent the elected representatives of the South from assuming control of the South Korean government from the control and dictation of Syngman Rhee and settling the differences between the North and the South by peaceful means.

With full notice and warning of the imminence of an armed clash, the said Dulles supported Rhee in his opposition to a peaceful settlement of the Korean dispute and instigated and encouraged the South Korean militarists to maintain positions which all responsible officials of the United States knew would provoke an attempt by one side or the other to break the tension by the resort to arms.

Upon his return to the United States after the war in Korea had commenced, the said Dulles made an untrue report that the South Korean government was democratic and was creating a wholesome society. The truth was exactly to the contrary. The government under Syngman Rhee had been defeated at the polls only a few weeks before the outbreak of the war, and war was the only means by which Syngman Rhee could stay in power.

The United States government, and particularly Dean Acheson, Secretary of State, well knowing before the war broke out of its imminence, did not make the slightest attempt to use the United Nations Organization or the International Court of Justice to achieve a settlement of the dispute so as to prevent the war. Instead the U. S. State Department made plans in advance of the clash to have the United Nations Commission in Korea make a partial and one-sided report that would place all the responsibility for the war upon the government of the North and

induce the United Nations Organization to support the United States government in waging war against the Korean people.

The United States armed forces engaged in war in Korea to carry out the government's policy of suppressing aggression, internal and external, bombed and destroyed the cities of Korea and killed some millions of Korean people, innocent of any offense or threat to do any harm to the people of the United States or any proper interest of the people of the United States. The devastation and havoc inflicted by the United States bombers, dropping napalm and jelly bombs on these poor, helpless, praying, suffering people, was described by Gen. MacArthur, the Supreme Commander of the United States forces as being revolting to a degree beyond any previous experience of his in warfare.

Plaintiff avers that these acts of the United States forces and especially the unnecessary, indiscriminate and ruthless bombing of undefended cities and old men, women and children of the civilian population of Korea amounted to war crimes and crimes against humanity within the meaning of the Nuremberg charter.

After the Northern forces invading that part of Korea, south of the 38th Parallel, had been repulsed and driven back to the north of that line, the United States forces, under the command of Gen. MacArthur, either by orders of President and Commander-in-Chief Truman, or with his tacit consent and approval, invaded that area of Korea north of the parallel and attempted to extend the jurisdiction of the Rhee regime over the whole of Korea by military means.

Failing in the attempt to make military conquest of the whole territory of Korea, the United Nations forces continued the war for nearly two years solely for the avowed

object of preventing the return of a considerable number of prisoners taken who, it was claimed, objected to repatriation. The invasion of the north and the waging of war to prevent repatriation of prisoners under international law constituted fresh acts of aggression by the United States forces under the orders and directions of General MacArthur and President Truman.

The commitment of the United States forces in the Korean war by the President was a lawless and arbitrary exercise of power. By the rule of individual responsibility for crimes against peace, war crimes and crimes against humanity prescribed by international law, it became the duty of individual citizens of the United States to refrain from any participation in and support of the acts of the government constituting the commission of these crimes.

The planning and preparation for the crimes through the inordinate and unparalleled building of armaments and means of warfare on a global scale, the constant threatening and bullying of other nations by the President of the United States, was a policy the execution of which by its natural and inevitable tendency would lead to actual warfare. And it did—in Korea in June, 1950. The "checking" of aggression internal and external by American arms and armies and air force in all parts of the world, the surrounding of the Soviet Union and China and other nations in Asia and the Far East as well as other parts and areas of the world, with military, air and naval bases of the United States amounted itself to aggression. This was universally recognized when the United Nations, during World War II, declared their war aims in the war with the Axis Powers to be the principles of the Atlantic Charter stating among other things that

> ". . . no future peace can be maintained if land, sea, or air armaments continue to be employed by nations

which threaten, or may threaten, aggression outside their frontiers . . ."

Furthermore, by the Charter of the United Nations Organization drawn up at San Francisco in June, 1945, the members agreed that they would "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations." Article 2, Sec. 3. One of the principal purposes expressed in the Charter was

". . . to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment, or settlement of international disputes or situations which might lead to a breach of the peace." Article i, Sec. 1.

With full knowledge of the situation in Korea which might lead to a breach of the peace in the year 1950, the United States Government refrained from attempting to bring about an adjustment or settlement of the situation, and instead allowed the South Korean Government which it was supporting by money and arms and with active military assistance and advice to provoke an armed conflict and at that stage intervened with military, air and naval force claiming that it was suppressing "aggression."

As a part and parcel of the plan or scheme to use force in Korea in violation of the principles of the Atlantic Charter and the obligations as a member of the United Nations Organization, the United States Government under orders and directions given by President Truman as Commander in chief of the Army and Navy used a naval force, i. e., the Seventh Fleet against the territorial integrity and political independence of China and contrary to the purposes of the United Nations. This aggressive act occurred

in the latter part of June, 1950, when President Truman ordered the Seventh Fleet to surround Formosa which was a comparatively small island off the mainland of China in order to support the bankrupt and defeated remnants of a military clique under the head and direction of Chiang Kai-shek which the Chinese people had driven out of control of their government and political affairs in the mainland of China and which had taken refuge on Formosa. This intervention was designed to deprive the Chinese people of their right to be represented in the United Nations and to assure instead that the vote reserved to China on the Security would be retained by Chiang Kai-shek and cast in the United Nations according to the dictates of the United States State Department.

Ever since that time, the Government of the United States has continued this aggression against the people of China and has used force and the threat of force to prevent the Chinese nation from the exercise of its lawful right to be a member of the United Nations. This aggressive interference with the use of military and naval force in international relations constitutes a violation not only of the obligations of the United States as a member of the United Nations, but also amounts to the commission of a crime against peace within the meaning and definition of the Nuremberg Charter and international law recognized and enforced by the Nuremberg Judgment and for complicity and participation in which there is individual responsibility.

The cost and expenses of these unlawful and criminal activities of the United States Government has been defrayed since 1945 by the levy of taxes by the Congress partly under the guise and for the pretended object of preparing for defensive war, although the larger and predominant purpose of aggression has not been concealed.

Amendments to Complaint

Plaintiff avers that the appropriation of the revenue of the federal government for these illegal and unconstitutional objects and purposes by the Congress was and is a part and parcel of the crime against peace, viz., the planning, preparing, initiating and waging of war for aggression and in violation of international treaties, etc.

The magnitude and scope of these illegal and unconstitutional activities being maintained by federal revenue has produced the situation where the federal government is faced with a recurring annual deficit, the amount of the estimated current deficit being between 9 and 10 billion dollars. The total of the sums paid for these illegal and unconstitutional objects runs into many times the current annual deficit.

Owing to the inability or failure of the Congress to raise by taxes enough money to cover the cost of the program presently in effect, it would be altogether beyond the realm of possibility that the taxing power would be able to provide the vast sums for the demands upon the Treasury that would result from the claims for refunds that would arise upon the establishment of the illegality of these exactions from the taxpayers. Aside from the legal considerations preventing the application of the statute forbidding the courts to restrain the collection of taxes, therefore, there is no plain, speedy and adequate remedy at law. If plaintiff should pay the tax suit at law to recover would in all likelihood be ineffective because the financial predicament of the Treasury is such that the claims for recovery of the taxes illegally exacted for the planning, preparing, initiating and waging of war for aggression and in violation of international treaties, etc., would be far in excess of the ability of the government to make such repayments.

Civil No. 1685.

ORDER.

(Received for Entry August 10, 1953.)

This cause came on to be heard upon the defendant's First National Bank in Springfield, Tennessee, motion that it be allowed to pay the fund of Six Thousand, Seven Hundred and Fifty ($6,750.00) Dollars into the court and thereafter dismissed from the cause, and the court after hearing argument of counsel was of the opinion that the motion should be allowed;

It is therefore ordered and adjudged that the defendant, First National Bank of Springfield, Tennessee, pay into the registry of the court Six Thousand, Seven Hundred and Fifty ($6,750.00) Dollars and that upon the payment of said sum the defendant, First National Bank of Springfield, Tennessee, be dismissed from the cause without costs.

On motion of the plaintiff, Fyke Farmer, that he be allowed to file amendments to his complaint in this cause and it appearing to the court that there was no objection by the defendants;

It is hereby ordered and adjudged that the plaintiff be allowed to file amendments to his complaint, which was done in open court.

Civil Action No. 1685.

PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT AND FOR ORDER DIRECTING THAT QUESTION OF JURISDICTION BE DETERMINED AT HEARING OF THE MERITS.

(Filed Aug. 17, 1953.)

The plaintiff, Fyke Farmer, moves for leave of Court to amend the complaint by alleging that unless equitable relief against the collection of the assessment is granted, he will suffer irreparable injury because of his inability to establish in an action at law for the recovery of the tax the proportion of the federal revenue that has been and is now being expended for the unlawful and unconstitutional objects so as to prove the amount of the judgment to which he would be entitled; and for an order directing that this action proceed to decision on the merits after issue has been joined and plaintiff has had full opportunity through the usual process of discovery to obtain all the evidence that is relevant to the subject matter, and that the question of jurisdiction be determined at the hearing upon the merits.

Civil Action No. 1685.

AMENDMENTS TO COMPLAINT.

(Received for Entry August 18, 1953.)

The plaintiff, Fyke Farmer, amends his complaint in the following respects:

I.

In addition to the other grounds showing the inadequacy of the remedy at law, plaintiff states that he would suffer

irreparable injury if he were required to pay the assessment against him. He would be unable to prove with sufficient definiteness and certainty the amounts of the various expenditures from the general fund of the Treasury that are for the planning, preparation, initiation and waging of war that is unconstitutional and illegal for the reasons set forth in his complaint as amended, and hence could not show by competent evidence at his disposition or which he could adduce the proportion of the payment expended for the lawful, constitutional and civil functions of the government and the proportion used for the unconstitutional war activities of the government. Notwithstanding the requirement of Article I, Section 9, clause 7 of the Constitution that a regular statement and account of the expenditures of all public money shall be published from time to time, the expenditures of the government for its war activities are drawn from appropriations to a number of different departments and agencies and the accounting classifications are so confused and blended together that a clear separation between those expenditures for lawful constitutional functions and those for the unlawful functions and war activities is impossible.

The Annual Report of the Secretary of the Treasury on the State of the Finances for the Fiscal Year Ended June 30, 1952, states:

> "**Warrants issued (expenditures)**—The Constitution of the United States provides that no money shall be drawn from the Treasury but in consequence of appropriations made by law. Section 305 of the Revised Statutes requires that the Treasurer of the United States shall disburse the moneys of the United States upon warrants drawn by the Secretary of the Treasury.
>
> As stated in the section preceding, Public Law 784, Eighty-first Congress, approved Sept. 12, 1950, modi-

fied the requirement with respect to the use of warrants for the disbursement of public money. During the fiscal year 1951 the Secretary of the Treasury and the Comptroller General of the United States issued joint regulations, which authorize the full amount of appropriations, with few exceptions, to be advanced to disbursing officers simultaneously with the issuance of the appropriation warrants.

As far as the appropriation accounts are concerned, before the fiscal year 1916 Treasury reports of expenditures were based on the amount of warrants issued and charged to the appropriation accounts. Such expenditures necessarily included the balances of funds remaining unexpended to the credit of the disbursing officers at the close of the fiscal year.

Checks issued (expenditures)—This basis, more than any other, reflects the real expenditures of the Government. Expenditures for a given fiscal year on the basis of checks issued differ from the corresponding figures on the basis of warrants in that the former include expenditures made by disbursing officers from credits granted during the previous fiscal year, and exclude the amount of unexpended balances remain- to their credit at the end of the fiscal year."

Annual Report for Fiscal Year Ended June 30, 1952, page 502.

The above-mentioned Annual Report of the Secretary of he Treasury for the fiscal year ended June 30, 1952, states hat all receipts of the Government are covered or credited nto the general fund of the Treasury from which all xpenditures are made. It is further stated that income axes are credited into the general account receipts. With espect to the appropriations from the general fund or ccount, the Report states:

"**General accounts.**—. . . Moneys represented in the general accounts may be withdrawn from the Treasury only in pursuance to appropriations made by Congress. There are six classes of appropriations payable through the general accounts of the Treasury, namely: (a) One-year, which are available for incurring obligations only during a specified fiscal year; (b) multiple-year, which are available for incurring obligations for a definite period in excess of one fiscal year; (c) no-year, which are available until exhausted for incurring obligations for an indefinite period of time; (d) definite, in which the amount is stated in the appropriation act as a specific sum of money; (e) indefinite, the amount of which is not stated in the appropriation act as a specific sum of money but is determinable only at some future date, such as an appropriation of the receipts from a certain source; and (f) permanent, which is automatically made each year over a period of time without annual action by Congress by virtue of standing legislation.

"A statement of general account receipts and expenditures is, therefore, in the nature of a general operating statement, and gives a picture of the relationship between the general revenues of the Government and the operating expenditures (including capital outlays and fixed charges) chargeable against them.

"**Special accounts.**—Special account receipts may be generally defined as funds received under special authorizations of law which may be expended only for the particular purposes specified therein. Special account receipts may not be used for the general expenditures of the Government. The more important items of receipts included under this heading, from the standpoint of amounts other than those applicable

to the retirement of the public debt, are the reclamation fund, Alaska Railroad fund, and Mineral Leasing act under the Department of the Interior; and the national forest funds under the Department of Agriculture. There are other special account receipts of lesser importance."

Annual Report of the Secretary of the Treasury for the fiscal year ended June 30, 1952, pp. 503-4.

The Report of the Secretary for the fiscal year ended June 30, 1953, has not yet been published. In the Report for the fiscal year ended June 30, 1952, it is stated:

"War and war related expenditures (for national defense, international finance and aid, interest on the public debt, and veterans benefits) amounted to $54.7 billion, and accounted for 83 percent of all expenditures in 1952.

"National defense expenditures of $39.1 billion were nearly twice those of 1951 and three times those of the 1947-50 average. In the first quarter of the fiscal year 1952, monthly defense expenditures averaged less than $2.9 billion; in the fourth quarter, nearly $3.8 billion. The increase reflected the sharply rising military expansion throughout 1952, the largest part consisting of major procurement and construction. The rate of the value of deliveries in the fourth quarter of the fiscal year was more than six times the rate of all military procurement and construction at the time of the attack on Korea. Expenditures for maintenance and operation, as those numbered as did expenditures for military personnel were expanding.

"In addition to the primary increases in national defense disbursements by the Department of Defense,

there were increases in supporting programs. The largest of these was for strategic and critical materials. Expenditures classified as national defense, however, actually did not include all outlays for defense purposes. Among these were the atomic energy program. Many other Government operations were expanded for defense purposes."

Annual Report of the Secretary of the Treasury for the fiscal year ended June 30, 1952.

The classification and capitulation of expenditures or disbursements under the heading "national defense" in the Report of the Secretary of the Treasury is arbitrary and not in accordance with any accounting classification or system established by the Congress or any executive department or executive agency in pursuance to authority delegated by the Congress. The appropriations against which all such expenditures and disbursements have been made have been general without any legislative determination or findings of the necessity for such appropriations for the defense of the United States. The Department of Defense has been allowed to make the allocations from the general appropriations for such purpose as "Expediting Production," $1,000,000,000; "Pay of the Army," $3,297,076,000; "Civilian Relief in Korea," $50,000,000. The foregoing as subheadings from the Department of Defense Appropriation Act, 1952, the appropriation clause of which is as follows:

"The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the National Security Council, the National Security Resources Board, and for military functions administered by the Department of Defense, and for other purposes for the fiscal year ending June 30, 1952, namely:"

Among the "military functions administered by the Department of Defense" at the time of the passage of said appropriation act was the Korean war. This war was being waged, according to the statement by the President and the legal opinion of the Department of State, as a "police action" directed by the United States Government, as "the executive agent of the United Nations."

Since the commencement of the Korean war in June, 1950, no appropriation has been made by the Congress specifically for the Korean war. The Secretary of Defense, the Secretaries of the several departments, the Army, the Navy, and the Air Force have all testified before the Appropriations Committees of the Senate and the House of Representatives that they have not been able to establish any system of accounting for making any separation of the costs and expenses of the Korean war. President Truman in his Budget Message to the Congress in January, 1953, made no separate estimates as to the costs and expenses of the war in Korea.

The Department of State on July 28, 1950, entered into an agreement with the Republic of Korea regarding expenditures by forces under the command of the Commanding General of the Armed Forces of the Member States of the United Nations engaging in the conduct and waging of the war under the "aegis" of the United Nations (Treaty Series 2135, State Department Publication 4038). Since this agreement was entered into the United States, according to press releases, has supplied many millions of dollars to the Republic of Korea for the supply of Korean money to the armed forces of the various member nations participating in the Korean war. Plaintiff, so far, has been unable to ascertain from what appropriation said expenditures have been made—or whether from the Department of Defense or the Department of State. He avers that the mak-

ing of said agreement and the expenditure of money thereunder was in violation of Sec. 627 of Title 31, U. S. C., providing:

> "No Act of Congress shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed."

The time for examination of monthly accounts covering expenditures by disbursing officers of the Army after the date of actual receipt by bureaus and offices of the Department of the Army and before transmitting the same to the General Accounting Office has been extended "in time of war or during any emergency declared by Congress or determined by the President and for a period of eighteen months after such war or emergency shall have ceased to exist, from sixty to ninety days" [Nov. 21, 1941, c. 499, 55 Stat. 781; as amended July 26, 1947, c. 343, Title II, Sec. 203 (a), 61 Stat. 501, Title 31, Sec. 80a].

The total of unexpended balances of appropriations for the Department of Defense (excluding civil functions) as of January 31, 1953, was $82,417,420,000. Included in this total are appropriations for the Department of the Army for military functions in the sum of $24,439,803 that were unexpended on said date. [Additional Report of Joint Committee on Reduction of Nonessential Federal Expenditures pursuant to Sec. 601 of the Revenue Act of 1941 (Senate Committee Print No. 4, 83rd Congress, 1st Sess.)]

Recently there has been another appropriation of many billions of dollars to the Department of Defense and to the other departments of the Government that will be avail-

able according to the custom and practices now obtaining for expenditures for financing the planning, preparation, initiation and waging of war, and in violation of Article I, Sec. 8, clause 12, of the Constitution providing that there shall be no appropriation of money to raise and support armies for a longer term than two years.

By reason of the facts and circumstances above stated, after the payment of the amount of the tax which plaintiff disputes into the general account or fund of the Treasury it will be impossible for plaintiff or any department or agency of the Government to determine what proportion of his tax payment was used to cover the costs and expenses of the illegal and unconstitutional war activities of the Government.

Plaintiff further shows to the court that Sec. 114 (f) of the Economic Cooperation Act of 1948, approved April 3, 1948, required that the sum of $3,000,000,000 be transferred to a trust fund entitled "Foreign Economic Cooperation Trust Fund" and "considered as expended during the fiscal year 1948, for the purpose of reporting governmental expenditures."

Plaintiff avers that in order to prevent irreparable injury to himself it will be necessary for the amount of the assessment against him, the payment of which he is opposing, to be paid into a special account or trust fund in the Treasury to be set up and maintained in the manner of the other special accounts and trust funds so that no part of the account or fund can be expended except for the lawful, civil and constitutional functions of the Government apart from the war or "defense functions." In order to accomplish and facilitate this object, plaintiff offers to consent and does hereby consent for the entire amount of the 1949 income tax assessment against him to be paid into such a

special account or trust fund and prays that the court order the money paid into the registry of the court in this case to be held until this has been done.

II.

In the third paragraph of Section II of the complaint, substitute Sec. 2201 for Sec. 2001.

Civil Action No. 1685

PETITION FOR THE RELEASE OF LIEN.

(Filed Oct. 19, 1953.)

Plaintiff, Fyke Farmer, respectfully states:

The sum of $6,750.00 now being held in the registry of the Court is the proceeds from the sale of certain timber on a farm situated in Robertson County, Tennessee. Plaintiff owns a one-half undivided interest in said farm with his brother. The Collector of Internal Revenue in June, 1952, registered a federal lien in the Register's Office of Robertson County for the amount of the assessment against plaintiff that is in controversy in this case. Said lien covers plaintiff's one-half interest in said real estate.

The amount of the deposit in the registry of the court is more than the amount of the tax with interest to date. Plaintiff desires to sell said farm land in Robertson County. The sale of said lands belonging to him and his brother and other connected farm land belonging to their father has been advertised at public auction for October 23, 1953. Plaintiff offers to deposit such additional sum in the registry of the Court or to make bond in such amount as may be deemed by the Court necessary to fully secure the payment of the assessment upon the termination of this lawsuit if it should be held that plaintiff is legally and constitutionally bound for its payment.

Wherefore, Plaintiff prays for an order of Court directing the release of the lien for the assessment against plaintiff's property both in Robertson and in Davidson County upon such conditions as to security for the payment of said assessment as the Court may hold to be right and proper.

Civil Action No. 1685.

ORDER RELEASING LIEN.

(Received for Entry October 21, 1953.)

In this cause the plaintiff, Fyke Farmer, having moved for an order of Court releasing the lien for the assessment against him for the 1949 income tax, and it appearing to the Court that the sum of $6,750.00 on deposit in the registry of the Court is ample security for said tax, with interest, and the Court being of the opinion, therefore, that said motion should be granted,

It is accordingly Ordered, Adjudged and Decreed that the lien for said assessment, notice of which has heretofore been filed by the Collector of Internal Revenue for the District of Tennessee in the Office of the Registers for Davidson and Robertson Counties, State of Tennessee, be and same is hereby released, except as to the fund in the custody of the Court.

Civil Action No. 1685.

MOTION TO DISMISS DENIED.

(Received for Entry April 7, 1954.)

This cause came on to be heard before the Court on the motion of defendants J. M. Rountree, Director, and Frank Taylor, Deputy Collector of Internal Revenue, here-

tofore filed in this cause, to dismiss plaintiff's suit with prejudice, on the grounds set out in said motion.

And after argument and consideration of the motion, the Court is of the opinion that the motion has considerable merit and is seriously inclined to grant same. However, the plaintiff in the case has made a very strong plea that he be allowed to develop his case fully on the merits, and the Court feels that he should be given the opportunity to do so. Therefore, the motion to dismiss is denied accordingly.

This 7th day of April, 1954.

Civil Action No. 1685.

MOTION TO DISMISS AMENDED COMPLAINT.

(Filed April 8, 1954.)

J. M. Rountree, Director, Internal Revenue Service, and Frank Taylor, Deputy Collector of Internal Revenue Service, United States Treasury Department by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, their attorney, move to dismiss this action, as amended by amendment to the complaint filed August 18, 1953, upon the following grounds:

I.

That this suit is for a declaratory judgment with respect to internal revenue tax of which this Court is without jurisdiction under 28 U. S. C. 2201.

II.

This is a suit to restrain the collection of internal revenue taxes, the maintenance of which is expressly prohibited by Section 3653 of the Internal Revenue Code.

III.

That this Court is without jurisdiction because the complaint does not state a case or controversy within the jurisdiction of the district court under Article III, Section 2, of the Constitution of the United States.

IV.

That the complaint, as amended, and the record, show that the plaintiff has sufficient funds deposited in the Registry of the Court with which to pay the tax involved, and would suffer no extraordinary hardship or irreparable injury by paying said tax.

V.

That the complaint, as amended, fails to state a claim upon which relief can be granted.

FRED ELLEDGE, JR.,
United States Attorney.

I certify that a copy of this motion was this day mailed to plaintiff.

April 8, 1954.

FRED ELLEDGE, JR.,
United States Attorney.

Civil Action No. 1685.

ORDER STAYING ANSWERING OF REQUESTS FOR ADMISSION.

(Received for Entry May 7, 1954.)

This cause came on to be heard before the Court on the 5th day of May, 1954, on the motion of the defendants J. M. Rountree, Director, and Frank Taylor, Deputy Collector of Internal Revenue, heretofore filed in this cause to dismiss plaintiff's suit, as amended, with prejudice on

the grounds set out in said motion; and the Court, after hearing argument, took said motion under advisement to be decided at a later date.

And this cause came on to be further heard on May 5, 1954 on plaintiff's motion heretofore filed in this cause for an order requiring Herbert Brownell, Jr., Attorney General of the United States, to show cause why he should not be directed and required to make a motion in the United States District Court for the Southern District of New York for an order vacating the order of April 9, 1954 by the Honorable Irving R. Kaufman, United States District Judge of said court, staying compliance with a subpoena requiring Major General Charles A. Willoughby to answer written interrogatories until five days after the ruling by this Court on a pending motion to dismiss plaintiff's cause; and after argument and consideration of the motion, the Court is of the opinion that plaintiff's motion is not well taken and should not be allowed. Therefore the motion is denied accordingly.

On motion of the defendants, it is ordered that the answering of the Requests for Admissions filed by the plaintiff on April 26, 1954 be stayed until after this Court rules on the defendants' motion to dismiss plaintiff's action, which has been taken under advisement.

Civil Action No. 1685.

PLAINTIFF'S MOTION FOR ORDER AUTHORIZING TAKING OF DEPOSITIONS AND OTHER DISCOVERY PROCEEDINGS FOR PURPOSE OF OBTAINING EVIDENCE TO ESTABLISH JURISDICTION MORE SATISFACTORILY.

(Filed May 21, 1954.)

Fyke Farmer, the plaintiff herein, moves the Court to make a preliminary inquiry into the facts constituting the

basis for the existence of jurisdiction and to make a finding on all the jurisdictional issues; and in order that plaintiff may be enabled to more fully and satisfactorily show the unavailability of the ordinary remedy of payment and an action at law for the recovery of the disputed tax, an order be made directing that plaintiff be allowed to:

1. Proceed with the examination of former President Harry S. Truman under the subpoena duces tecum heretofore served upon him and that a date be fixed for his appearance to be examined by the plaintiff before the officer named in the subpoena after plaintiff has been allowed to take the depositions of Edmund F. Mansure, Administrator of General Services, and Wayne O. Grover, Archivist of the United States, to obtain evidence showing that the said Harry S. Truman made a false affidavit to obtain the order from Judge Alber A. Ridge of the District Court of the United States for the Western District of Missouri on July 20, 1953 quashing the subpoena duces tecum and staying the taking of the deposition of the said Harry S. Truman.

2. Take the depositions of Lindsay C. Warren, former Comptroller General of the United States, Harold Pearson, Deputy Under Secretary of the Army, Lt. Gen. George H. Decker, Comptroller of the Army, and Noel Hemmindinger, Officer in Charge, Economic Affairs, Department of States, together with the deposition of former President Truman, and other witnesses if further evidence is necessary, to show that the accounting system of the Government is not adaptable to showing, separately from the ordinary, general expenses of maintaining the civil, peaceful, constitutional functions of the Government, the costs of all the various illegal and unconstitutional war activities which are being carried on for the object of planning, preparing, initiating, and waging war for aggression and in violation of international treaties, agreements and as-

surances; and further to show more clearly the manner in which billions of dollars have been and are now being drawn from the Treasury and billions of dollars worth of government property have been and are now being disposed of and consumed contrary to the constitutional and statutory prohibitions against the application of the public moneys and property for objects for which no appropriation has been made by law in specific terms (Constitution, Art. I, Sec. 9, clause 7, Sec. 8, clause 12; Title 31, U. S. C., 627, 628 and 665; Title 22, U. S. C., Sec. 287d-1) and requiring that statements and accounts of the expenditures of all public money be published regularly (Constitution, Art. I, Sec. 9, clause 7; Budget and Accounting Procedures Act of 1950, Chap. 946—Public Law 784, 81st Cong., 2d Session, approved Sept. 12, 1950; Public Law 216, approved August 10, 1949, 81st Congress, Title IV, Section 410; and other statutes).

3. Finding and determining that the orders and directives made by former President Truman engaging and committing the armed forces of the United States in the Korean war and involving the expenditure of the public money for the prosecution of the war (including the building up of the South Korean forces under the command of Syngman Rhee) and the facts relevant to these matters are not within any proper and constitutional claim of privilege.

Plaintiff further moves the Court to set aside that part of the order entered on May 7, 1954, staying the answering of the Requests for Admission filed by the plaintiff on April 26, 1954, until after the decision of the Court on defendants' motion to dismiss plaintiff's action and for an order directing that the Requests for Admissions be answered within a reasonable time to be fixed by the Court in order that the facts thus established may be taken into consideration by the Court in its determination of the jurisdictional issues.

In support of this motion plaintiff files an affidavit showing the relevancy and necessity of the discovery which he is seeking.

Civil No. 1685.

ORDER DENYING MOTION TO DISMISS AMENDED COMPLAINT.

(Received for Entry August 5, 1955.)

In the above styled cause, it is ordered, adjudged, and decreed by the Court that the motion to dismiss the amended complaint, heretofore filed and argued herein, be, and the same is hereby, denied.

This 5th day of August, 1954.

Civil Action No. 1685.

ANSWER.

(Filed Sep 23, 1955.)

The defendants, J. M. Rountree, Director of Internal Revenue for the District of Tennessee, and Frank Taylor, Deputy Collector of Internal Revenue, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, their attorney, for their answer to the complaint herein, as amended, respectfully allege and show:

1.

Deny each and every allegation contained in paragraph I of the complaint, except they admit that this is an action for declaratory judgment and to restrain the collection of internal revenue taxes.

2.

Deny each and every allegation contained in paragraph II.

Answer

3.

Admit each and every allegation contained in paragraph III.

4.

That the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in paragraph IV of the complaint.

5.

That the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in paragraph V of the complaint.

6.

That the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in paragraph VI of the complaint, except they admit that income taxes for the year 1949 were duly assessed against the plaintiff in the sum of $4,733.95, plus interest; that a warrant for distraint was issued for the collection of these taxes and that on June 8, 1951, notice of lien thereof was duly filed by the Collector in the office of the Register of Deeds of Davidson County, Tennessee, and in the office of the Register of Deeds of Robertson County, Tennessee.

7.

That the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and averments contained in paragraph VII.

8.

Admit each and every allegation contained in paragraph VIII.

Response to Plaintiff's Request for Admission No. 2

9.

Deny each and every allegation contained in paragraph IX.

10.

Deny each and every allegation contained in paragraph X.

For a Complete Defense.

11.

That the complaint as amended fails to state a claim upon which relief can be granted.

For a Further Complete Defense.

12.

That this Court is without jurisdiction of this action because it is a suit for declaratory judgment and for an injunction restraining the collection of internal revenue taxes jurisdiction of both of which has been expressly withheld from the District Courts of the United States.

Wherefore defendants demand judgment dismissing the complaint with costs.

Civil Action No. 1685

RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION NO. 2.

(Filed Sep. 23, 1955.)

J. M. Rountree, Director of Internal Revenue for the District of Tennessee, and Frank Taylor, Deputy Collector of Internal Revenue, for their response to Plaintiff's Request for Admission No. 2, allege that they are without

knowledge or information sufficient to form a belief as to the truth of the matters the admission of which is requested numbered respectively 1 through and including 1319.

J. M. ROUNTREE,
FRANK W. TAYLOR.

Verification.

State of Tennessee,
Middle District of Tennessee, } ss.

J. M. Rountree and Frank Taylor, the defendants above-named, having been severally duly sworn, depose and say, each for himself, that he has read the foregoing Response to Request for Admission No. 2, and the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief.

J. M. ROUNTREE,
FRANK W. TAYLOR.

Subscribed and sworn to before me this 23rd day of September, 1955.

MARTHA L. HARRIS,
(Notary Seal) Notary Public.

My commission expires April 16, 1956.

Civil Action No. 1685.

MOTION TO STRIKE DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION NO. 2.

(Filed Mar. 2, 1956.)

Comes the plaintiff, Fyke Farmer, and moves the Court to strike the defendants' response to his Request for Admission No. 2 for insufficiency on the ground that their

sworn statement fails to allege that the means of securing the information or knowledge concerning the facts and matters set forth in said request are not reasonably within their power.

Civil Action No. 1685.

PLAINTIFF'S MOTION FOR FORMULATION OF ISSUES

(Filed May 29, 1956.)

Comes the plaintiff, Fyke Farmer, and moves the Court to order the defendants within a time fixed by the Court to file an agreement to Plaintiff's Statement of Issues of Law and Fact or objections thereto with a counter-statement of any issues of law and fact deemed by the defendants to be material to the determination of the controversy involved in this action. Plaintiff's Statement is annexed to this motion and made a part hereof.

Civil Action No. 1685.

APPLICATION OF PLAINTIFF FOR RULING ON MOTION OF DEFENDANTS TO VACATE NOTICE TO TAKE DEPOSITION OF HARRY S. TRUMAN.

(Filed Aug. 28, 1956.)

Comes the plaintiff Fyke Farmer and moves the Court to make a ruling on the defendants' motion to vacate the notice to take the deposition of Harry S. Truman and their motion to stay the taking of the deposition of Harry S. Truman, and to fix a date for the taking of his deposition under the subpoena heretofore served on him.

UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

FYKE FARMER, vs. J. M. ROUNTREE, et al.	Civil No. 1685.
WALTER E STYLES, vs. UNITED STATES OF AMERICA.	Civil No. 1934.
UNITED STATES OF AMERICA, vs. FYKE FARMER, et al.	Civil No. 2203.

ORDER.

(Received for Entry September 5, 1956.)

On motion of the parties, it is Ordered that the above three cases be, and the same are, set together for a pre-trial conference on September 25 and 26, 1956.

Notice

In the
UNITED STATES DISTRICT COURT
For the Middle District of Tennessee.

FYKE FARMER, Plaintiff, vs. J. M. ROUNTREE, Director of Internal Revenue for the District of Tennessee, and FRANK TAYLOR, Deputy Collector of Internal Revenue, Defendants.	Civil Action No. 1685.

NOTICE.

(Filed Sept. 18, 1956.)

To Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, and F. G. Rita, Department of Justice, Washington, D. C.:

Please take notice that the plaintiff, Fyke Farmer, on Tuesday, September 25, 1956, at the pretrial conference before Wm. E. Miller, United States District Judge, will move the Court to rule upon the following motions and matters:

1. Plaintiff's Motion for Formulation of Issues.

2. Plaintiff's Motion to Strike Defendants' Response to Plaintiff's Request for Admission No. 2.

3. The Application of Plaintiff for a ruling on the Defendants' Motions to Vacate the Notice to Take the Deposition of Harry S. Truman and their Motion to Stay the Taking of the Deposition of Harry S. Truman, and to Fix a Date for the Taking of the Deposition of Harry S. Truman.

Civil Action No. 1685.

MOTION BY DEFENDANT TO VACATE ORDER ENTERED AUGUST 5, 1954.

(Filed Sept. 26, 1956.)

The defendants, J. M. Rountree, Director of Internal Revenue, and Frank Taylor, Deputy Collector of Internal Revenue, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, their attorney, move to vacate the order heretofore entered herein on the 5th day of August, 1954, and for reconsideration and rehearing of the said motion, or, in the alternative, for judgment on the pleadings dismissing the action.

Civil Action No. 1685.

ORDER ENTERED ON PRE-TRIAL CONFERENCE.

(Received for Entry September 26, 1956.)

A pre-trial conference in the above-entitled action having been held before me on the 25th and 26th days of September, 1956; and the defendants having filed their motion for judgment on the pleadings herein on September 26, 1956; and the plaintiff having moved that ten days be allowed him for serving opposing affidavits and otherwise resisting the defendants' motion under Rule 56 (c), Federal Rules of Civil Procedure; it is

Ordered that the plaintiff's motion be, and the same hereby is denied; and it is further

Ordered that the plaintiff, in lieu of filing affidavits or taking depositions, have until October 5, 1956 to file any amendment to his complaint, allegiag any further facts or

making such further allegations as he deems necessary or proper to develop a genuine issue of fact, and that the defendants have until October 9, 1956 to file any responsive pleading thereto; that the plaintiff shall file with his amended pleading any brief or memorandum in support thereof on October 5, 1956, and that the defendants shall file any brief or memorandum in support of their motion on October 9, 1956; and it is further

Ordered that decision upon all other matters pending in this case shall be reserved until decision upon the defendants' motion for judgment on the pleadings.

Civil Action No. 1685.

AMENDMENTS TO COMPLAINT.

(Filed Oct. 5, 1956.)

Pursuant to leave of Court, the plaintiff, Fyke Farmer, amends his complaint and alleges as follows:

I.

1. On or about June 25, 1950 (Korean time) the government of the Republic of Korea, Syngman Rhee, President of the Republic of Korea, Ben C. Limb, Foreign Minister of the Republic of Korea, John Foster Dulles, Consultant to the United States Department of State, General Douglas MacArthur, Commanding General United States forces in the Pacific, Louis Johnson, Secretary of Defense of the United States, John J. Muccio, United States Ambassador to the Republic of Korea, General Omar N. Bradley, Chairman of the Joint Chiefs of Staff of the United States and divers other persons unknown to plaintiff initiated war in Korea for the purpose of overthrowing by force the Government of the Korean Democratic People's Republic

and extending the jurisdiction and control of the Republic of Korea over that part of Korea lying north of the Thirty-eighth Parallel which use of force was inconsistent with the Purposes of the United Nations. The persons named on and prior to said date (the exact dates and times of their several participations being unknown to plaintiff) participated as leaders, organizers and instigators in the formulation of a common plan or conspiracy to initiate war in Korea in violation of the United Nations Charter. It was a part of said common plan or conspiracy to have the Government of the United States charge before the Security Council of the United Nations that the war was commenced by the Government of the Government of the Korean Democratic People's Republic (hereinafter called North Korean Government), under circumstances constituting a breach of the peace and an act of aggression and to obtain authority from the Security Council of the United Nations in accordance with the powers conferred by Chapter VII of the United Nations Charter to authorize military action by the member nations in cases of a breach of the peace or an act of aggression in order to maintain or restore international peace and security; and for the United States to wage a war of aggression in Korea.

2. In the execution of said common plan certain of the leaders, organizers and instigators named (the persons responsible therefor being unknown to plaintiff), on June 25, 1950 (Korean time), caused information to be communicated to the United States Department of State, Washington, that at 4 o'clock in the morning of Sunday, 25 June, Korean time, armed forces from North Korea commenced an unprovoked assault against the territory of the Republic of Korea. Without evidentiary substantiation for said information, the Department of State at three o'clock in the morning, June 25, 1950, Washington time,

by instructions from President Harry S. Truman, by telephone made an urgent request of Trygve Lie, Secretary General of the United Nations to call an immediate meeting of the Security Council of the United Nations representing that forces of the North Korean Government had invaded the Republic of Korea under circumstances constituting a breach of the peace and an act of aggression. Acting upon this request, the Secretary General called an urgent session of the Security Council of the United Nations to meet at Lake Success at 2 P. M. Sunday June 25, 1950, New York time.

3. Ernest A. Gross, Deputy Representative of the United States to the United Nations, stated to the United Nations Security Council at the meeting Sunday, June 25, 1950 that:

> "At 4 o'clock in the morning of Sunday, 25 June, Korean time, armed forces from North Korea commenced an unprovoked assault against the territory of the Republic of Korea. . . .
>
> . . .
>
> ". . . It is armed aggression against the Government elected under United Nations supervision."

The said Gross submitted a draft resolution for adoption by the Security Council which noted the Security Council's grave concern at the invasion of the Republic of Korea by the armed forces of North Korea. This draft resolution called upon the authorities in the north to cease hostilities and to withdraw their armed forces to the border along the 38th parallel. It requested that the United Nations Commission on Korea observe the withdrawal of the North Korean forces to the 38th parallel and to keep the Security Council informed on the implementation and execution of the resolution. The draft resolution also called upon all members of the United Na-

tions to render every assistance to the United Nations in the carrying out of the resolution, and to refrain from giving assistance to the North Korean authorities.

4. The United States Government controlled the communications with South Korea. The Secretary General of the United Nations relied upon the representations by the Deputy Representative of the United States to the United Nations. The representation that at 4 o'clock in the morning of Sunday, June 25, 1950, Korean time, armed forces from North Korea commenced an unprovoked assault against the territory of the Republic of Korea was unsupported by any trustworthy and verified information of an evidentiary nature in the possession of the United States Government. On the contrary, the Government of the United States had knowledge of facts and circumstances constituting reasonable or probable cause for the belief that hostilities in Korea were commenced by provocation attacks by armed forces from South Korea against the territory of North Korea on or about Sunday, June 25, 1950. The United States Government knew that the Republic of Korea ever since its establishment had been guilty of a course or train of threats of force and provocatory acts against the North Korean Government and had in fact informed the United Nations Commission on Korea that it positively and finally rejected any idea of trying to achieve the unification of Korea through compromise or peaceful negotiations with the North Korean Government or leaders of the party in control of the North Korean Government. The above-mentioned information was material to a determination by the Security Council of the United States charge that the North Korean Government was guilty of an attack under circumstances constituting a breach of the peace and an act of aggression and said information was not disclosed by the United States Government to the Security Council.

5. On June 26, 1950, President Harry S. Truman issued a statement in which he stated in part:

> "I conferred Sunday evening with the Secretaries of State and Defense, their senior advisers, and the Joint Chiefs of Staff about the situation in the Far East created by unprovoked aggression against the Republic of Korea.
>
> ". . . In accordance with the resolution of the Security Council, the United States will vigorously support the effort of the Council to terminate this serious breach of the peace."

The characterization of "the situation in the Far East" as having been created "by unprovoked aggression against the Republic of Korea" was improper and unwarranted by any facts within the knowledge of the Government of the United States and the statement that there had been "unprovoked aggression against the Republic of Korea" was not true in point of fact and substance. Until the intervention of United States forces under the commands and directives given by President Truman, the war in Korea was a civil war. Both the Republic of Korea and the Government of the United States were at fault in occasioning the difficulty resulting in that armed conflict between the forces of the two governments, the one in the North and the other in the South, each claiming to be the legitimate government for the whole of Korea. The United States Government supported the government in the South with money and arms and compelled the adoption of political, economic and military policies by that government which precluded peaceful unification of the North and South and otherwise created conditions which it knew would inevitably lead to or bring about civil war. These measures were taken in execution of the policy directive given by President Truman to Secretary of State James F. Byrnes, January 5, 1946, to create a "strong

central government" for Korea. These acts on the part of the Government of the United States were beyond its competence under international law and required the exercise of powers outside the constitutional boundaries laid down for the legislative and executive branches. Long before the initiation of hostilities in Korea on or about June 25, 1950, the United States Government refrained from bringing before the Security Council the situation in Korea which it knew was likely to lead to military conflict and in not invoking the powers of the Security Council to call upon the parties concerned to comply with provisional measures in order to prevent an aggravation of the situation in accordance with Article 40 of the United Nations Charter. Instead the Government of the United States, in contemplation of the imminent outbreak of war in Korea, had well-laid plans to dispatch arms aid to the South Korean Government, to present charges of aggression against the North Korean Government before the Security Council and obtain a recommendation for the employment of armed forces under Articles 39 and 41 of the Charter, and under the purported authority of such Security Council recommendation to intervene with its air and naval power based in Japan and the Far East and thereby to quickly bring the whole of Korea under the control of the government in South Korea. It was part of this plan that the United Nations Commission on Korea would be able to present to the Security Council a report on field inspectors showing that South Korean forces were in a defensive position in order to support the claims of an aggressive attack from the North. In furtherance of this plan, and as a part and parcel of the common plan for the initiation of war mentioned in paragraph 1 of this Section I, some of the persons named as being parties to said plan contrived to disable the United States Military Advisory Group in South Korea, consisting of 500 officers and men assigned to units of the South Korean Army down

to the regimental and battalion level in positions along the 38th Parallel prior to June 24th, from witnessing the commencement of hostilities and to that end orders were arranged and dispatched resulting in:

a) The departure of Lt. Col. Sterling Wright and Brig. Gen. W. L. Roberts, the two highest officers in authority over the U. S. Military Advisory Group, along with other high officials of the South Korean Defense Department, being over in Tokyo when hostilities were commenced so that the military advisory group was without a head: and

b) The entire Military Advisory Group (with one or two exceptions) being away from the border or front and on leave back in Seoul or the U. S. Military Headquarters many miles away from the places at the parallel where it was claimed the North Koreans launched attacks and which were the same places where the North Koreans claimed the South Koreans first attacked them.

The planning and preparing for war in Korea on the part of the Government of the United States preceding the initiation of war on June 25, 1950, was not disclosed to the Security Council at the meeting on June 25th and neither were these facts disclosed by President Truman in his statement that "the situation in the Far East" had been "created by unprovoked aggression against the Republic of Korea."

6. It was the duty of the Government of the United States to make a full disclosure of the facts mentioned in the preceding paragraph 5 and other facts within its knowledge showing that the Republic of Korea and the Government of the United States were at fault in occasioning the difficulty resulting the armed conflict between the two governments in Korea. Said facts and information were material to the finding or determination made

by the Security Council of an "armed attack upon the Republic of Korea" on which the resolutions adopted by the Security Council, June 25, 1950 was predicated. Said facts and information were not known to the other members of the Security Council and were concealed by the United States Government.

7. It was the duty of the Government of the United States to make a full disclosure of the facts mentioned in paragraphs 5 and 6 to the Security Council before its adoption of the resolution on June 27, 1950, reciting "Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace" and recommending "that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area." Said facts and information were not known to the other members of the Security Council when said resolution was adopted and were concealed by the Government of the United States.

8. When the Security Council adopted its resolution of June 27, 1950, it relied on a report from the United Nations Commission on Korea to the Secretary General of the United Nations which was in these words:

"UN doc. S/1507

The United Nations Commission on Korea to the Secretary-General.

Seoul, June 26, 1950.

Commission met this morning 1000 hours and considered latest reports on hostilities and results direct observation along parallel by Uncok Military Observers over period ending 48 hours before hostilities be-

gan. Commission's present view on the basis this evidence is, first, that judging from actual progress of operation Northern regime is carrying out well-planned, concerted, and full-scale invasion of South Korea, second, that South Korean forces were deployed on wholly defensive basis in all sectors of the parallel, and, third, that they were taken completely by surprise as they had no reason to believe from intelligence sources that invasion was imminent. Commission is following events and will report further developments."

a) The United States Government had knowledge that the Uncok Military observers who made the observation along the parallel ending 48 hours before hostilities began had also reported as follows:

"8. Observers made special point inquiring what information was coming in regarding situation north of parallel. In some sectors it had been reported that civilians had recently been removed from areas adjoining parallel to north to depths varying from 4 to 8 kilometers. Another report received during the night Thursday, 22 June at regimental headquarters Ongjin was to effect that there was increased military activity in vicinity Chuyia about 4 kilometers north parallel. No reports, however, have been received of any unusual activity on part of North Korean forces that would indicate impending change in general situation along parallel."

and concealed from the Security Commission when it deliberated and adopted the resolution of June 27 all of the above information.

b) The United States Government also had knowledge of the following facts which it concealed from the Security

Council when it deliberated and adopted the resolution of June 27, 1950.

> "The entire South Korean army had been alerted for weeks and was in position along the Thirty-Eighth Parallel. Brigadier General William L. Roberts and about five hundred American military personnel of the Korean Military Advisory Group had worked with the South Korean army for about two years. The American embassy maintained expensive military-attache groups in Korea as well as political specialists whose sole business was to gauge the trend of events. The Central Intelligence Agency (CIA) maintained a small local unit. Even the Far East Air Force had a detachment there." (From article in Cosmopolitan Magazine for December, 1951, by Gen. Charles A. Willoughby, Chief of Intelligence for Gen. MacArthur.)

c) The United States Government also had knowledge of the following facts which were not disclosed to the Security Council when it deliberated and adopted the resolution of June 27, 1950:

> "They (the South Koreans) passed through those people. The South Koreans were no match for them at all, and the disposition by the South Koreans of their logistic potential was extraordinarily poor.
>
> "They had put their supplies and equipment close to the thirty-eighth parallel. They hadn't developed any positions in depth. Everything between the thirty-eighth parallel and Seoul was their area of depot.
>
> "Then they lost that immediate line, they lost their supplies. They were not able apparently to destroy them in masse; so that at one initial stroke this North Korean army had a new supply base in the area between the thirty-eighth parallel and Seoul, which en-

abled them to press south with the full strength of their base immediately behind them; they no longer had to rely upon the long distance from the Yalu to get their supplies down." (Testimony before Senate Armed Services and Foreign Relations Committee, May 4, 1951.)

9. When the Security Council deliberated on and adopted the resolution of June 27, 1950, it had before it a report of the United Nations Commission on Korea to the Secretary-General of the United Nations (UN doc. S/1505) sent from Seoul, June 26, 1950, stating in part as follows:

"13. General Kim Ilsung in radio broadcast this morning at 0930. hours reiterated the North Korean claim first made at 1335 hours that South Korea having rejected every Northern proposal for peaceful unification had crowned its iniquity by launching an invasion force across the parallel in the sector of Haeju C. M. A. thus precipitating North Korean counter-attacks for which they would have to assume consequences.

"14. In the same broadcast the Premier called for a struggle to the end in order to secure unification and punish 'traitors' calling for mass risings and sabotage in South Korea. The Commission has no evidence to justify in any respect the Northern allegations. All evidence continues to point to a calculated co-ordinated attack prepared and launched with secrecy."

The United States Government had information that the statement in the above report that the North Korean claim was first made at 1335 hours (1:35 p. m. Sunday, June 25th Korean time) was not correct and that the North Korean claim quoted in the U. N. Commission's report was first made in a broadcast by Premier Kim Ilsung over the North

Korean radio and heard in Seoul before 11:00 a. m. Sunday, June 25th, Korean time same being the "declaration of war" referred to in the message from Ernest A. Gross, Deputy Representative of the United States to the United Nations read to Trygve Lie, Secretary General of the United Nations at three o'clock in the morning Sunday, June 25, 1950, in these words: "Pyongyang Radio under the control of the North Korean regime, it is reported, has broadcast a declaration of war against the Republic of Korea effective 9 p. m. e. d. t. June 24."; and further had information that the South Korean Government had rejected every Northern proposal for peaceful unification and at the commencement of hostilities South Korean troops had captured Haeju, capital of the Hwangae Province, north of the 38th parallel; and had the further information that the first public announcement of the commencement of fighting at the parallel was the North Korean broadcast on Sunday morning June 25. The United States Government did not disclose the information mentioned in this paragraph to the Security Council when it deliberated on and adopted the resolution of June 27, 1950.

10. When the Security Council deliberated on and adopted the resolutions of June 25th and June 27th, the United States Government made no disclosure to it of the following facts:

a) That early in June, 1950, John Myun Chang, Ambassador from the Republic of Korea to the United States, notified the U. S. Department of State that his government was on the verge of internal collapse owing to the fear that the United States would abandon it in the event of military conflict with the North Korean government and asked for some guaranty of armed intervention by the United States in the event of war between the two governments;

b) That when the North Korean political leaders on June 7, 1950, proposed a general all-Korea election on August 5, a meeting of a Supreme Korean Assembly on August 15, and the holding of a preliminary Joint North-South Conference near the thirty-eighth parallel, on account of the fear by the Department of State that the newly elected Assembly in South Korea under the control of the majority not belonging to Syngman Rhee's party would accept such proposal and negotiate a coalition or compromise plan for the unification of Korea, President Truman dispatched Mr. John Foster Dulles, top consultant to the State Department, to South Korea to block any such unification moves;

c) That the said Dulles arrived in South Korea about June 18 and hastened to make a military inspection at the 38th parallel accompanied by the American Ambassador to South Korea, John J. Muccio, and high officials of the United States Military Advisory Group and learned, as he admitted after the war was started, that "it was a critical time";

d) That only a few days before the arrival of the said Dulles in South Korea emissaries from North Korea bearing the proposal for peaceful unification upon crossing the border into southern territory were arrested by South Korean authorities and were still being held in jail while Mr. Dulles was in South Korea inspecting the situation;

e) That on June 19, the new South Korean Assembly convened with Syngman Rhee's supporters heavily outnumbered and Mr. Dulles made them an address exhorting them against communism, reminding them that the United States had intervened twice with armed might "in defense of freedom" and assuring them that "You are not alone";

f) That on the same day Mr. Dulles addressed the assembly, or on the next, the North Koreans offered a see-

ond unification proposal, differing only slightly from the one made on June 7th, the second one, however, being made officially by the government itself;

g) That President Syngman Rhee told the assembly while Mr. Dulles was there "We refuse to compromise with or make any concession to the Communists. That would be the road leading to disaster."

h) That Mr. Dulles otherwise gave the South Koreans to understand that the United States Government was backing Rhee in his refusal to negotiate with the North Koreans and encouraged the belief that the United States would go to war against the North.

II.

The United Nations Security Council's resolutions of June 25, June 27 and July 7, 1950, do not constitute authority to the Government of the United States to wage war in Korea because:

1. The decisions of the Security Council on these matters did not include the concurring vote of the Soviet Union, one of the permanent members of the United Nations.

2. Compliance with the recommendations and decisions of the Security Council was not obligatory on the United States since no agreement concerning armed forces available to the Security Council had been negotiated in accordance with article 43 of the United Nations Charter.

3. The adoption of the resolutions by the Security Council was induced by misrepresentation and non-disclosure on the part of the United States of facts material to the determinations of the Security Council on said matters.

4. The conflict in Korea was a domestic matter, i. e., the right of the Korean people to choose the form of gov-

ernment under which they would live, and it was not within the competence or jurisdiction of the United Nations or the United States of America to use force for the purpose of interference with their right to free choice.

III.

The resolutions of the General Assembly of the United Nations of February 1 and May 18, 1951, because these actions of the General Assembly were in excess of its jurisdiction under the United Nations Charter.

Civil Action No. 1685.

MOTION BY DEFENDANTS TO VACATE ORDER OF AUGUST 5, 1955.

(Filed Oct. 16, 1956.)

The defendants, J. M. Rountree, Director of Internal Revenue, and Frank Taylor, Deputy Collector of Internal Revenue, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, their attorney, move to vacate the order heretofore entered herein on the 5th day of August, 1955, and for reconsideration and rehearing of the said motion, or, in the alternative, for judgment on the pleadings, as amended, dismissing the action.

Civil Action No. 1685.

MOTION OF PLAINTIFF.

(Filed Oct. 16, 1956.)

Comes the plaintiff, Fyke Farmer, and respectfully moves the Court to strike the motion of the defendants to vacate the order heretofore entered herein on the 5th day of August, 1954 (plaintiff assuming that the order referred to is the one entered on the 5th day of August, 1955) and objects to reconsideration and rehearing of the defendants'

motions to dismiss and to the alternative motion for judgment on the pleadings dismissing the action upon the following ground:

The questions of law constituting the sole basis for said motions (the defendants now insisting that no issues of fact are involved), were adjudicated by the Honorable Elmer D. Davies, presiding over Division I of this Court, by the orders denying the defendants' motions to dismiss entered on the 7th day of April, 1954 and the 5th day of August, 1955, and the decisions of Judge Davies constitute the law of the case which is binding upon the judge before the motions have been made.

UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

J. M. ROUNTREE, Director, et al. vs. FYKE FARMER et al.	Civil Action No. 1685.
WALTER E. STYLES vs. UNITED STATES OF AMERICA.	Civil Action No. 1934.
UNITED STATES OF AMERICA vs. FYKE FARMER et al.	Civil Action No. 2203.

ORDER.

(Received for Entry October 16, 1956.)

By consent of the parties, and with the approval of the Court, the defendants in Civil No. 1685 and Civil No. 1934,

and the plaintiff in Civil No. 2203, adopt the complaints and other responsive pleadings heretofore filed by them and rely upon same as responses to the amendments filed in each of the above cases by Fyke Farmer and Walter E. Styles on October 5 and 9, 1956.

Civil Actions Nos. 1685, 1934 and 2203.

MEMORANDUM.

(Received for Entry October 17, 1956.)

These actions involve the income tax liability of the taxpayers, Fyke Farmer and Walter E. Styles, for the year 1949.

In Civil Action No. 1685, Farmer sues under the Declaratory Judgments law for a judgment declaring his immunity in substantial part from income tax liability for the year 1949 and to enjoin collection of the tax assessed against him. In Civil Action No. 2202, the United States sues Farmer to recover his assessed income taxes for the year 1949. In Civil Action No. 1934, Styles having paid his 1949 income taxes, sues for a refund.

In each action the Government has filed a motion for judgment on the pleadings, taking the position that the pleadings show, as a matter of law, that the Court is without jurisdiction to entertain or adjudicate the claims of the taxpayers and that such claims in any event are legally groundless.

The taxpayers insist that they should be permitted to take proof and that the actions cannot properly be disposed of upon the pleadings alone. They propose to conduct an inquiry into the military and international affairs of the

Federal Government since the cessation of hostilities in World War II, and to examine countless witnesses, including former President Truman and a host of other high ranking civil and military officers. They also propose to obtain evidence from the Government by submitting over 1300 requests for admission of facts. It is estimated that a minimum of six weeks time would be required for a trial on the facts.

The stated purpose of the proposed proof is to show that the military and foreign policies of the United States since World War II, including the prosecution of the Korean War, were designed and carried out not for the purpose of defense or the protection of the proper interests of the United States, but for the purpose of aggrandizement and to impose military domination by the United States throughout the world. It is argued that such alleged activities on the part of the Federal Government are in violation of international law and are therefore illegal and void. Once these alleged facts are established, so the taxpayers argue, they have the right as individuals under principles of international law to refuse payment of two-thirds of their income taxes for the reason that the federal revenue in that proportion has been illegally appropriated by Congress to the preparation for and waging of aggressive war, and the remaining one-third to the legal and constitutional functions of government. They contend, in short, that international law overrides the internal laws of the United States and extends to them as individual citizens not only the right but the duty to refuse to participate in the so-called aggressive military activities of the country, and hence the right to refuse payment of taxes appropriated for those purposes. Otherwise, it is argued that they would be guilty as war criminals under international law and punishable as such.

But giving the taxpayers the benefit of all factual allegations of their pleadings, whether admitted or denied by the Government, it is apparent that their claims cannot be legally supported and that no amount of proof could give them validity. Under such circumstances, to permit the proposed inquiry to be made would be an abuse of the processes of the Court, as well as a waste of judicial time seriously needed in the trial and consideration of other cases.

Courts are constituted to adjudicate cases and controversies properly coming within the judicial sphere of action. They have no right or authority to resolve political or governmental questions, or to review issues of governmental policy entrusted to the executive and legislative departments.

Under the Constitution of the United States, Congress is vested with the exclusive right to levy taxes and to appropriate public revenue for the common defense and general welfare of the country, Constit. Art. 1, Sec. 8, Cl. 1, and to provide for and maintain an army and a navy, Constit. Art. 1, Sec. 8, Cls. 12 and 13. It has, as it must necessarily have, the authority exclusive of any court, to determine the requirements of national defense and the amount of tax revenue to be used for defensive or military purposes.

The foreign policy of the United States is the exclusive province of the executive and the legislative branches of government, and in this area of responsibility, as well as in all questions of national defense, it is imperative that courts strictly observe the limitations upon their power and refrain from rendering any judgment which would embarrass the policy decisions of government or involve them in confusion and uncertainty.

With these principles in mind, it is apparent that the Court is without jurisdiction of the claims here asserted. To grant taxpayers the relief they seek, the Court would be required to substitute its judgment for that of the other two branches of the Government by declaring that the foreign and military policies of the nation were in reality for illegal and aggressive war and not for the legitimate purpose of national security or for the preservation of the essential interests of the United States. The judiciary not only does not have the proper criteria or the technical competence to make such determinations, but it is without the means of obtaining the varied and complex facts which would be required to draw a conclusion. Even if it could develop criteria and obtain the facts, it is altogether clear that the courts must refrain from intruding or intermeddling in realms so manifestly political and nonjudicial. If the judiciary should assume the power contended for, thus in effect reversing and condemning the considered judgment of the President and the Congress, the foreign and military policies of the Federal Government could have no real finality until approved by the courts at the conclusion of interminable private litigation. The chaotic and disruptive effects of such judicial censorship are so obvious that comment upon them is unnecessary.

No taxpayer or citizen has the right to have the judiciary conduct an inquiry into the military and foreign policies of the United States, or to review or reexamine the appropriations made by Congress for military and defense purposes. The courts have no more authority to sit in judgment upon such discretionary acts and decisions of the executive and legislative departments, after the event, then they would have to restrain them or advise them what to do in the first instance.

There are many examples where the courts have refused to intervene because due regard for the effective working of our government revealed the issue to be one of a purely political nature and, therefore, not proper for judicial determination.

Violation of the guarantee of a republican form of government to the states cannot be challenged in the courts. Pacific States Tel. & Tel. v. Oregon, 223 U. S. 118. The duty to see to it that the laws are faithfully executed cannot be brought under legal compulsion. State of Mississippi v. Johnson, 4 Wall. 475. Questions affecting the boundaries of nations are political questions and the courts must respect the pronounced will of the legislature. Foster v. Neilson, 2 Pet. 253, 309. The same is true with respect to the recognition or non-recognition of foreign governments, Oetjen v. Central Leather Co., 246 U. S. 297; the duration of a state of war, The Protector, 12 Wall. 700; and the abrogation of treaties, The Chinese Exclusion Case, 130 U. S. 581. Similar cases of judicial restraint with respect to purely political questions could be multiplied indefinitely. But none can be found more strikingly illustrating the necessity for non-interference by the courts than the present actions.

Another reason that the Court lacks jurisdiction to adjudicate the claims in question is that the Supreme Court of the United States has established and adhered to the doctrine that an individual taxpayer has no right to challenge a federal appropriation act on the ground that it is invalid and will result in taxation for illegal purposes. Massachusetts v. Mellon, 262 U. S. 447, 67 L. ed. 1078. In such cases the rights of the individual are not affected in such manner as to give rise to a judicial controversy.

Aside from the Court's lack of jurisdiction to adjudicate facts essential to the taxpayers' case, there are still

other fatal objections to the claims. In the first place, the Court does not agree that there exists a principle of international law operating to relieve citizens from their tax obligations and liabilities under the local laws of their country, or imposing upon them individual responsibility for the use made of tax revenue. No precedent for such a view has been cited and it finds no support in the language or purpose of any international engagement to which this country is a party. The Nuremberg Judgment was based upon altogether different facts and does not support the theories of immunity here advanced.

Secondly, if the principle could be discovered, it could not be enforced so as to interfere with or impair the exclusive and non-delegable powers of the executive and legislative departments with respect to the foreign and military policies of the nation. The treaty-making power "does not extend so far as to authorize what the constitution forbids". Geofroy v. Riggs, 133 U. S. 258, 33 L. ed. 642, 645; Asakura v. Seattle, 265 U. S. 332, 68 L. ed. 1041, 1044.

Many other reasons suggest themselves why the claims cannot prevail, but the reasons indicated are fundamental and are dispositive of all of the issues.

The argument that Judge Davies' prior orders overruling the motion to dismss in Civil Action No. 1685, have become the law of the case is not well taken. It is apparent from the order of April 7, 1954, that Judge Davies had serious doubts about jurisdiction and that he in effect reserved a ruling upon that question, as well as upon all other questions, until the case was more fully developed by the plaintiff. His subsequent order of August 5, 1955, overruling a motion to dismiss the complaint as amended, did not specifically rule that the Court had jurisdiction

or that the complaint stated a valid claim for relief. That order is to be construed in the same way as the first order, i. e., that the motion to dismiss was overruled merely to allow the taxpayer the opportunity to further develop his case.

However, at a recent pre-trial conference, called for the purpose of defining the issues, the question of jurisdiction was renewed by the Government and the importance of a decision upon the question at this time was made clearly to appear by the taxpayers' proposal to take the extensive and practically unlimited proof already alluded to. In this posture, the Court directed the entry of an order permitting the taxpayers to further amend their pleadings so as to state their case in its strongest light and if possible to develop a genuine and material issue of fact. Pursuant to the order the taxpayers have filed further extensive pleadings and it may reasonably be supposed that their case is now before the Court in its most favorable light. That being true, the Court is of the opinion that the jurisdictional question, which was not decided by Judge Davies, should now be passed upon, and the actions finally disposed of.

The motion of the Government in the three actions for judgment on the pleadings will be sustained and an appropriate form of judgment will be submitted in each case.

In the
UNITED STATES DISTRICT COURT
For the Middle District of Tennessee.

FYKE FARMER,
vs.
J. M. ROUNTREE, Director, et al.,
Civil Action No. 1685.

and

UNITED STATES OF AMERICA,
vs.
FYKE FARMER, et al.
Civil Action No. 2203.

MOTION FOR RECONSIDERATION AND REHEARING.

(Filed October 29, 1956.)

Comes Fyke Farmer and respectfully moves the Court to reconsider the Memorandum filed October 17, 1956, and to grant a rehearing of the motions for judgments on the pleadings upon the following grounds:

1. The Court overlooked the fact that the main issue presented is not "political" but one of individual right. In his complaint in Civil Action No. 1685, plaintiff alleged:

> "Plaintiff is conscientiously opposed to participation in the war activities of the government. He relies upon the right of individual conscience under the fundamental law of the Constitution, and particularly upon the clause of the Declaration of Rights of the Tennessee Constitution providing that:

". . . no human authority can, in any case whatsoever, control or interfere with the rights of conscience;' "

(Section VI of Complaint.)

He alleged that the acts of the defendants in attempting the forcible collection of the tax were "in violation of the Constitution and the law of the land by which plaintiff is threatened with the deprivation of his rights to liberty and property guaranteed to him by the Fifth, Ninth and Tenth Amendments to the Constitution." (Section I of Complaint.)

An elaboration of plaintiff's legal position in reliance upon the constitutional right of conscience is set forth in the "Brief of Points of Fact and Law Relied Upon in Support of Protest of Fyke Farmer Against the Collection of Federal Income Taxes Assessed Against Him for the Year 1949" annexed to the Complaint and marked Exhibit "A" and made a part thereof.

Plaintiff alleged that two-thirds of the tax, if it had been paid, would have been withdrawn from the Treasury in violation of the Constitution and used and spent by the government for the commission of Crimes Against Peace, War Crimes and Crimes Against Humanity. In the Complaint and the Amendments thereto, facts are alleged which show that plaintiff had probable cause for his belief that the executive and legislative branches, at the time of the filing of this action, were exceeding powers conferred upon them to defend the United States and provide for its general welfare and that in fact that government was waging a war of aggression in Korea and besides was committing war crimes and crimes against humanity in carrying on that war.

Plaintiff says that the refusal of the Court to adjudicate the question of individual right presented amounts to a

denial of due process of law guaranteed by the Fifth Amendment. If it be true that "The treaty-making power 'does not extend so far as to authorize what the Constitution forbids' ", neither does the power of the executive over the foreign relations of the United States nor the power conferred upon the Congress to levy taxes for the defense and general welfare of the United States—treaty or no treaty—extend to waging a war of **aggression** because that is not a legitimate means to defend the United States or provide for its welfare.

2. The statement in the Memorandum that Judge Davies in effect reserved a ruling upon the question of jurisdiction, "until the case was more fully developed by the plaintiff" is contradicted by the fact that on August 17, 1953, plaintiff moved that the question of jurisdiction be determined at the hearing upon the merits and this motion was in effect denied by Judge Davies. (See rulings written on the motion by Judge Davies.)

3. The ruling that "giving the taxpayers the benefit of all factual allegations of their pleadings, whether admitted or denied by the Government, it is apparent that their claims cannot be legally supported and that no amount of proof could give them validity" amounts to an abdication of the judicial power and is a denial to plaintiff of his individual constitutional right to **law** because:

a) In the record in these cases there is no denial of the factual allegation of the pleadings of plaintiff and where an issue arises on a motion for judgment on the pleadings, a fact not disclosed by the record will be presumed to be unfavorable to the movant; and

b) The right of a citizen to due process of law "must rest upon a basis more substantial than favor or discretion." Roller v. Holly, 176 U. S. 398, 44 L. ed. 520, 20 S. Ct. 410.

4. On the allegations in the pleadings and the depositions and requests for admission and interrogatories on file, as well as the entire record, in these actions plaintiff has shown that his case is well founded on a constitutional restriction (the right of individual conscience) which may not be impinged upon by the war power and the taxing power especially when exercised for purposes beyond and outside of the constitutional grant of powers to the executive and legislative branches and plaintiff is entitled to examine former President Truman and other officials, civil and military, responsible for the acts alleged as constituting the commission of international crimes and violations of the international treaties, agreements and assurances mentioned and set out in the pleadings in order to discover additional evidence to support the cause of action set forth including bad motives on the part of former President Truman and said other officials.

Alternative Motion.

In the event the foregoing motion to reconsider and grant a rehearing should be denied plaintiff moves the Court to judicially determine before the rendition of any judgment against defendant Fyke Farmer or in favor of the United States of America or directing the disposition of the deposit in the registry of the court in Civil Action No. 1685:

1. The amount of the liability of Fyke Farmer on account of income tax for the year 1949: and

2. That he is not liable for interest during the period that the sum of $6,750 claimed by the Director of Internal Revenue under the attempted levy has been deposited in the registry of the Court.

In the
UNITED STATES DISTRICT COURT
For the Middle District of Tennessee.

FYKE FARMER v. J. M. ROUNTREE, Director, et al.	Civil Action No. 1685.
WALTER E. STYLES v. UNITED STATES OF AMERICA.	Civil Action No. 1934.
UNITED STATES OF AMERICA v. FYKE FARMER et al.	Civil Action No. 2203.

MOTION OF FYKE FARMER AND WALTER E. STYLES.

(Filed October 29, 1956.)

Come Fyke Farmer and Walter E. Styles in each of the respective actions to which they are severally parties and move the Court in passing upon their motions for reconsideration of the Memorandum filed October 17, 1956, and a rehearing of the motions for judgments on the pleadings to take judicial knowledge of the facts and documents set forth and mentioned in the requests for admission filed in these three actions.

Civil Actions Nos. 1685, 1934 and 2203.

EXCEPTIONS TO FINDINGS BY THE COURT.

(Filed October 31, 1956.)

Fyke Farmer and Walter E. Styles respectfully except to the finding that the executive and legislative branches

of the government in the exercise of considered judgment and discretion decided that "the foreign and military policies of the nation were . . . for the legitimate purposes of national security or for the preservation of the essential interests of the United States" and the conclusion that "No taxpayer or citizen has the right to have the judiciary conduct an inquiry into the military and foreign policies of the United States, or to review or reexamine the appropriations made by Congress for military and defense purposes." The grounds of their exceptions are:

1. The statement and finding implies that the methods and means adopted by the President and the Congress to implement decisions reached by them were within their constitutional powers and that those decisions were made in good faith and for the honest intention of effecting legitimate purposes of national security and for the preservation of the essential interests of the United States and were not in reality for illegal and aggressive war and since the issue arises on the Government's motion for judgment on the pleadings, the Court is required to proceed on the assumption less favorable to it, viz., that the decisions of the other two departments were not made in good faith and not for the honest intention of effecting legitimate purposes of national security and not for the preservation of essential interests of the United States but were in reality for illegal and aggressive war.

2. In so far as the finding rests upon judicial knowledge these litigants have been denied due process of law because the record shows (by their pleadings, requests for admission, interrogatories, motions for the production of documents, depositions, motion for formulation of issues and motions with respect to jurisdiction, motions noticed for disposition at the pre-trial conference and argument before the Court at the pre-trial conference) that they dispute the finding and offered evidence upon the issue, and upon the

filing of the motions for judgment on the pleadings, the Court orally ruled that to dispose of the motion the allegations of these litigants would have to be taken as true.

3. The finding is arbitrary, capricious and without legal foundation.

4. The Congress never declared that the war against Korea was necessary for the defense of the United States and the interrogatories filed by Fyke Farmer in Civil Action No. 2203 to be answered by former President Truman show good and sufficient grounds for questioning the motives of Mr. Truman in ordering the employment of United States armed forces in the Korean war.

In The
UNITED STATES DISTRICT COURT
for the Middle District of Tennessee,
Nashville Division.

FYKE FARMER,

Plaintiff.

v.

J. M. ROUNTREE, Director of Internal Revenue for the District of Tennessee, FRANK TAYLOR, Deputy Collector of Internal Revenue, and FIRST NATIONAL BANK, Springfield, Tennessee A Corporation,

Defendants.

Civil Action No. 1685.

JUDGMENT AND DECREE

(Received for Entry November 16, 1956.)

J. M. Rountree, Director of Internal Revenue for the District of Tennessee, and Frank Taylor, Deputy Collector

of Internal Revenue, defendants above named, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, their attorney, having moved for judgment on the pleadings upon the grounds that this Court is without jurisdiction of this action because it is an action for declaratory judgment and to restrain the collection of internal revenue taxes and that the complaint fails to state a claim upon which relief can be granted; and the said motion having come duly on to be heard; and, after hearing Mr. Frederic G. Rita, Attorney, Tax Division, Department of Justice, in support of said motion, and Mr. Fyke Farmer, the plaintiff, in propria persona, in opposition thereto; and due deliberation having been had thereon; and the Court, on October 17, 1956, having filed its opinion sustaining the said motion, it is, upon motion of Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee,

Ordered, Adjudged and Decreed that the defendants' said motion for judgment on the pleadings be and the same is in all respects granted; and it is further

Ordered, Adjudged and Decreed that the action be dismissed with costs to the defendants Rountree and Taylor.

Enter:

/s/ WM. E. MILLER,
United States District Judge.

UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

FYKE FARMER v. J. M. ROUNTREE, Director, et al.	Civil Action No. 1685.
WALTER E. STYLES, v. UNITED STATES OF AMERICA.	Civil Action No. 1934.
UNITED STATES OF AMERICA v. FYKE FARMER et al.	Civil Action No. 2203.

ORDER.

(Received for Entry November 21, 1956.)

In these actions the Court has carefully considered the taxpayers' motions for reconsideration and rehearing and their exceptions to the findings by the Court in its memorandum filed October 17, 1956, together with the taxpayers' briefs submitted in support of such motions and exceptions. Upon such consideration, the Court is of the opinion that the motions and exceptions are not well taken and should be overruled.

It is, therefore, ordered that the respective motions of the taxpayers for reconsideration and rehearing and their exceptions to the findings of the Court be and they are hereby overruled and disallowed.

The alternative motion of the taxpayer, Fyke Farmer, that he be held not liable for interest during the period that the sum of $6,750.00 was deposited in the Registry of the Court is also not well taken and is overruled.

The final judgments in each action heretofore entered shall remain in full force and effect.

WM. E. MILLER,
United States District Judge.

In the
UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

UNITED STATES OF AMERICA vs. FYKE FARMER and FIRST NATIONAL BANK, Springfield, Tennessee, a Corporation.	Civil Action. No. 2203.

DOCKET ENTRIES.

Date	
5-31-56	Complaint filed.
6- 1-56	Summons issued, accompanied with two copies of summons and complaint and same delivered to the Marshal for services.
6- 1-56	Four attested copies of complaint, together with attested copy of summons delivered to the U. S. Attorney.
5-13-56	Summons returned executed and filed. MFE $4.90.

Docket Entries

6-19-56	*Answer filed by First Nat'l Bank of Springfield with cert'f of service.
7- 2-56	Order entered on stipulation of parties allowing deft. Farmer until July 23, 1956, in which to file his responsive pleadings to the complaint. Three attested copies delivered to U. S. Attorney.
7-23-56	*Answer filed by Defendant Fyke Farmer with Exhibit A attached, three attested copies of said answer delivered by Mr. Hall to U. S. Attorney.
8- 3-56	Defendant's Interrogatories filed with cert'f of service, three attested copies delivered by Atty. Farmer to U. S. Attorney.
8- 3-56	Defendant's Request for Admission under Rule 36 filed, with cert'f of service, three attested copies delivered by Atty. Farmer to U. S. District Attorney.
8-27-56	Motion filed by plaintiff for order requiring defendant to answer interrogatories, with certificate of service.
9- 5-56	Order entered setting together cases Nos. 1685, 1934 and 2203 for pre-trial conference for Sept. 25 and 26, 1956; four attested copies of same delivered to U. S. Atty., one to Atty. Farmer.
9-14-56	Notice to take deposition of witness Harry Truman filed by Defendant.
9-26-56	Motion by Plaintiff for judgment on the pleadings filed. (Copy to Fyke Farmer in open court on pre-trial conference.)
9-26-56	Interrogatories submitted by the Defendant to be answered by Harry S. Truman, filed.
9-26-56	Order entered on pre-trial conference: Defendant's motion allowing him ten days for serving

opposing affidavits and otherwise resisting the plaintiff's motion for judgment on the pleadings is denied: Order that defendant, in lieu of filing affidavits or taking depositions, have until October 5, 1956, to file any amendment to his answer, and plaintiff have until October 9, 1956 to file any responsive pleadings thereto, and both parties shall file any brief in support thereof. All other matters pending in this case shall be reserved until decision upon the plaintiff's motion for judgment on the pleadings.

9-26-56 O. C. R. transcript and shorthand notes filed on pre-trial conference. (See case No. 1685.)

10-15-56 Amendments to Answer filed by Defendant with certificate of service, three attested copies being delivered by Atty. Farmer to U. S. Dist. Atty. Elledge.

10- 5-56 Order entered vacating defendant's motion to take Harry S. Truman's deposition, and dismissing action as to First Nat'l Bank of Springfield, Tenn., allowing plaintiff until Oct. 8, 1956 to file amendments to pleadings and briefs, and opposite parties time to file, etc., extended to Oct. 16, 1956. Copy of said order mailed to all counsel of record. Six attested copies delivered to U. S. Attorney.

10-16-56 Motion filed by plaintiff for judgment on the pleadings, copy furnished attorney, Fyke Farmer, four attested copies delivered to U. S. Atty.

10-16-56 Objections filed by defendant to plaintiff's motion for judgment on the pleadings, with cert'f of service. Three attested copies delivered to U. S. Atty.

10-16-56 Order entered by consent allowing parties adopt the complaint and other responsive pleadings heretofore filed and to rely upon these responses to the amendments filed Oct. 5-9, 1956. Copy mailed to Atty. Farmer, nine attested copies delivered to the U. S. Attorney.

10-17-56 *Memorandum-Opinion entered by Justice Wm. E. Miller directing that the Government's Motion for Judgment on the Pleadings is sustained, and an order to that effect be entered. Attested copy mailed to the Attorney General at Washington, D. C., attested copy mailed to Attorney Fyke Farmer, and three attested copies delivered to the U. S. Attorney.

10-29-56 Motion filed by Deft. Farmer for Reconsideration and rehearing, with brief in support thereof together with Motion that the Court take judicial knowledge of the facts and documents mentioned in request for admissions, also filed is certificate of service.

10-31-56 *Exceptions to Findings by the Court filed by Defendant, three attested copies delivered to U. S. Attorney.

11-14-56 Copy O. C. R. Proceedings of Sept. 25, 1956, filed, original to Atty. Fyke Farmer.

11-16-56 *Judgment and Decree entered dismissing this action as to defendant the First Nat'l Bank, Springfield, Tenn., without costs to it, and granting plaintiff's motion to dismiss this action, ordering that plaintiff U. S. A. recover from said defendant Fyke Farmer the sum of $4,706.56 with interest and costs; further ordered that the Clerk pay to Director of Int. Revenue the said

sum of $6,750.00 et seq., with costs, and pay Fyke Farmer the balance. Five attested copies delivered to U. S. Attorney, one mailed to Attorney General at Washington and one delivered in person to Attorney Fyke Farmer.

11-21-56 Order entered overruling and denying the Taxpayer's motion for rehearing, also exceptions to Court's Findings, etc., also denying Taxpayer's motion to not be held liable for interest, etc., and further ordered the final judgment heretofore entered shall remain in full force and effect. Attested copy of said order mailed to Attorney Fyke Farmer, one to the Attorney General at Washington, and two attested copies delivered to the U. S. Attorney.

Civil Action No. 2203.

COMPLAINT OF THE UNITED STATES OF AMERICA.

(Filed May 31, 1956.)

United States of America for its complaint herein by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, alleges and shows:

1.

That the United States of America is a corporation sovereign and body politic.

2.

That this complaint is authorized by the Attorney General of the United States at the request of the Commissioner of Internal Revenue.

3.

That First National Bank, Springfield, Tennessee, is a corporation organized and existing under and by virtue of the banking laws of the United States and has or claims to have some right, title or interest in and to the fund hereinafter mentioned which claim, if any, is inferior to the lien of the United States.

4.

That on or about the first day of June, 1956, there was duly assessed against the defendant, Fyke Farmer, as income taxes for the calendar year 1949 the sum of $4,733.95; that the assessment list covering the said assessment was received by the Director of Internal Revenue for the District of Tennessee on July 17, 1950, and notice of said assessment and demand for payment were duly given by the Collector to the defendant, Fyke Farmer; and that on June 8, 1950, notice of lien covering the said assessment was duly filed in the office of the Register of Davidson County, Tennessee.

5.

On or about the 21st day of October, 1953, an order was duly entered in the action of Fyke Farmer vs. J. M. Rountree, Director of Internal Revenue for the District of Tennessee, Frank Taylor, Deputy Collector of Internal Revenue, and First National Bank, Springfield, Tennessee, a Corporation, Civil No. 1685, in this Court, releasing the lien of the Government upon the property of the defendant, Fyke Farmer, and authorizing the deposit with the registry of this Court of $6,750.00 to cover the amount of the aforesaid taxes assessed against the defendant, said Fyke Farmer; that the said sum $6,750.00 is still on deposit in the registry of this Court.

6.

That no part of said taxes assessed against the said Fyke Farmer as aforesaid have been paid.

Wherefore United States of America demands judgment against the defendant, Fyke Farmer, as follows:

Judgment against the defendant, Fyke Farmer, for the ful amount of the taxes set forth above, foreclosing the lien of the United States upon the aforesaid sum on deposit in the registry of this Court to the exclusion of the defendant, First National Bank, and granting to the United States such other and further relief as may be just.

FRED ELLEDGE, JR.,
United States Attorney.

Civil Action No. 2203.

DEFENDANT'S INTERROGATORIES.

(Filed Aug. 3, 1956.)

Fyke Farmer, the defendant herein, requests the plaintiff United States of America to answer the following interrogatories in accordance with Rule 33 of the Federal Rules of Civil Procedure:

1. Were the orders or directives made by President Harry S. Truman authorizing and directing General Douglas MacArthur, Commanding General of the Far Eastern Command in Japan, to furnish air and naval assistance to the Republic of Korea soon after the war in Korea started on or about June 25, 1950 in written form or were same only verbal? If in writing please file copies with the answer.

Defendant's Interrogatories

2. Were the orders and directives made and issued by President Harry S. Truman authorizing and directing General MacArthur to use ground units in the Korean war, the Air Force to conduct missions on specific targets in North Korea, and a naval blockade of the entire coast of Korea mentioned in the Chronology of the Korean Conflict set out as Appendix III to "United States Policy in the Korean Conflict" (Dept. of State Bulletin 4263) verbal or in writing? If in writing please file copies with the answer.

3. Did President Truman make or issue an executive order, directive or memorandum in writing authorizing or approving the directive issued by Louis Johnson, Secretary of Defense, dated September 1, 1950, regarding the supply of material and services by the military departments to the foreign governments participating in the Korean war? If so please file a copy with the answer.

4. Did the Department of Defense maintain accounts showing the costs involved in furnishing the supplies and services as required by said directive made by the Secretary of Defense?

5. Has any report of the costs involved in furnishing such supplies and services, the amounts received in reimbursement from foreign governments and the balances owing by foreign governments ever been made? If so when and to whom? Please file copies of any such reports.

6. Have the accounts maintained by the Department of Defense mentioned in Interrogatory No. 4 been audited by the General Accounting Office and kept and reported to the Secretary of the Treasury as required by Title 31, U. S. C., Sec. 103?

7. By what law was the disposition of property and services belonging to the United States of America di-

rected to be made by the Secretary of Defense by the directive dated September 1, 1950 authorized?

8. By what law was the contract with the Government of the Republic of Korea regarding the expenditures of forces under command of the commanding general armed forces of the member states of the United Nations dated July 28, 1950 (Department of State Treaties and Other International Acts Series 2135) authorized?

9. Did President Truman make or issue an executive order, directive or memorandum in writing authorizing or approving the making of such contract or agreement on behalf of the United States?

10. What is the total amount of the public money that has been spent in payment of the obligations under said contract?

11. To what appropriation acc at have the expenditures under the aforesaid contract or agreement been charged?

12. Has any statement or account showing these expenditures been reported in the Combined Statements of Receipts, Expenditures and Balances of the United States Government by the Treasury Department in compliance with section 15 of the Act of July 31, 1894 (Title 5, U. S. C., Sec. 264)? If so how and where do such statements or accounts appear?

13. By what law was the contract or agreement on economic coordination between the Unified Command and the Republic of Korea dated May 24, 1952 (Department of State Treaties and Other International Acts Series 2593) authorized?

14. Did President Truman make or issue an executive order, directive or memorandum in writing authorizing or approving the making of such contract or agreement on behalf of the United States?

15. What is the total amount of the public money that has been spent in payment of the obligations under said contract?

16. To what appropriation account have the expenditures under the aforesaid contract or agreement been charged?

17. Has any statement or account showing these expenditures been reported in the Combined Statements of Receipts, Expenditures and Balances of the United States Government by the Treasury Department in compliance with section 15 of the Act of July 31, 1894 (Title 5, U. S. C., Sec. 264)? If so how and where do such statements or accounts appear?

18. By what law was the financing of civilian relief in Korea by the Department of the Army in compliance with the letter directive of President Truman dated on or about September 29, 1950 authorized?

19. To what appropriation account were the expenditures under said directive charged?

20. What was the total amount of the public money spent in compliance with the letter directive of President Truman dated September 29, 1950?

21. Has any statement or account showing these expenditures been reported in the Combined Statements of Receipts, Expenditures and Balances of the United States Government by the Department of the Treasury in compliance with the requirements of section 15 of the Act of July 31, 1894 (Title 5, U. S. C., Sec. 264)? If so how and where do such statements and accounts appear?

22. To what appropriation account were the expenditures for the purposes set out in Defendant's Request for Admission No. 5 filed in this action on July 30, 1956 charged?

23. Have accounts showing expenditures for the purposes set forth in said Request for Admission No. 5 been audited by the General Accounting Office and kept and reported to the Secretary of the Treasury as required by Title 31, U. S. C., Sec. 103?

24. By what law was the disposition of property and services belonging to the United States of America set forth in said Request for Admission No. 5 authorized?

25. State whether or not it is true that:

The Military Sea Transportation Service during the period of the Korean war existed to provide sea transportation for personnel and cargoes of the Department of Defense. In pursuit of this service MSTS operated a world-wide network of passenger and cargo lines moving troops and their dependents to and from Western Europe and Korea, cargo of all types to U. S. and U. N. forces in those areas, and petroleum products from the Gulf of Mexico and the Middle East ports. The total expense of operating the Military Sea Transportation Service during fiscal year 1953 was $700,006,355. Approximately 75 percent of all funds expended by MSTS for its operations were paid directly to private shipping interests. More than 90% of all personnel and material entering Korea was transported by MSTS. (Semiannual Report of the Secretary of the Navy, Jan. 1 to June 30, 1953, pages 227-229.)

26. To what appropriation account or accounts were expenditures for operating Military Sea Transportation Service charged?

27. By what law was the Department of Defense authorized to enter into contracts with private shipping interest and otherwise create obligations involving the Government for the payment of the public money for the pur-

poses set forth in the Semiannual Report of the Secretary of the Navy, January 1 to June 30, 1953 at pages 227-229 reporting on the operations of Military Sea Transportation Service?

28. Have accounts showing expenditures for Military Sea Transportation Service been audited by the General Accounting Office and kept and reported to the Secretary of the Treasury as required by Title 31, U. S. C., Sec. 103?

29. Colonel Harry H. Critz, Deputy Director, office of Programming and Control, International Security Administration testified on June 13, 1956 before the subcommittee of the Committee on Appropriations, House of Representatives, on the hearings on Mutual Security Appropriations for 1957 as follows:

> "During the period 1950-56, the United States has contributed over $6 billion of military aid to these countries (8 Far East Nations [excluding Pakistan] receiving mutual-defense assistance from the United States). Of this amount approximately $3½ billion was furnished to the Governments of Korea and Japan from equipment produced for use in the Korean war, and paid for with funds appropriated to the military departments."

Is the above statement correct?

30. What law authorized the furnishing of approximately $3½ billion of equipment to the Governments of Korea and Japan that was paid for out of funds appropriated to the military departments?

31. Have accounts showing expenditures for the purposes stated in the testimony of Col. Harry H. Critz quoted in Interrogatory No. 29, supra, been audited by the General Accounting Office and kept and reported to the Secre-

tary of the Treasury as required by Title 31, U. S. C., Sec. 103?

32. To what appropriation account or accounts were the expenditures for the purposes stated in Col. Critz's testimony charged?

33. Dr. Raymond T. Moyer, Regional Director, Office of Far Eastern Operations, Foreign Operations Administration, testified June 27, 1955 before the subcommittee of the Committee on Appropriations, House of Representatives, in the hearings on Mutual Security Appropriations for 1956 as follows:

> ". . . this is the first year in which we are programming direct forces support for Korea in the mutual security program. Until now this item has largely been provided directly out of the budget of the Department of Defense, following the war in Korea."

Is the above testimony by Mr. Moyer correct?

34. By what law was direct forces support for Korea provided out of the budget of the Department of Defense up until the time the item was programmed in the mutual security program?

35. To what appropriation account were the expenditures for direct forces support to the Republic of Korea charged by the Department of Defense?

36. What is the total amount of such expenditures by the Department of Defense for direct forces support to the Republic of Korea?

37. Have accounts showing expenditures for direct forces support by the Department of Defense to the Republic of Korea been audited by the General Accounting Office and

kept and reported to the Secretary of the Treasury as required by Title 31, U. S. C., Sec. 103?

38. State whether or not expenditures made by the Truman Administration out of the public money for the military occupation and assistance to South Korea between VJ-day and the end of the calendar year 1948 aggregated over a billion dollars (Aid to the Republic of Korea, Report of the Committee on Foreign Relations, United States Senate, Sen. Report No. 748, 81st Congress, 1st Session, page 6); and there was no statutory authorization for such expenditures. (H. Rept. No. 1571, 81st Cong., 2d Session.)

39. Did President Truman make or issue any executive order, directive or memorandum in writing authorizing these expenditures?

40. What appropriation account or accounts were charged with the expenditures involved in the maintenance of the army forces in South Korea from January 1, 1949, until the withdrawal of those forces on or about June 30, 1949; and what is the total of such expenditures?

41. What appropriation account or accounts were charged with the costs and expenses of Army aid and relief furnished in South Korea by the United States Army between VJ-day and the end of the calendar year 1948 in the amount of $434,321,425? (Sen. Report 748, page 6).

42. What appropriation account or accounts were charged with the expenditures for the maintenance of the United States Military Advisory Group in Korea from July 1, 1949, until the commencement of the war on Korea on or about June 25, 1950; and what was the total of such expenditures?

43. What law authorized the Army to give to the Republic of Korea upon withdrawal of the United States oc-

cupation forces in July, 1949, military and naval equipment which had originally cost the United States approximately $56 million and had a 1949 replacement value of about $110 million? (House Report No. 2495, 81st Cong. 2d Session, page 33).

44. What law authorized the transfer from United States stocks in Japan to South Korea during the first quarter of the fiscal year 1950 of individual organizational equipment for 15,000 troops?

45. What law authorized the turning over to the Republic of Korea of $85,000,000 worth of equipment and supplies of military origin? (Dept. of State Publication 4266, page 10).

46. Did the President, in pursuance to the authority conferred by Sec. 301 of Public Law 329, 81st Congress, 1st Session, allocate through the Department of Defense for administration and expenditure by the Army in the Republic of Korea any part of the sum of $27,640,000 authorized by Sec. 302 of said Act, and if so, how much; and give the date or dates of such allocations?

47. What equipment, materials, services, and other military assistance were furnished to the Republic of Korea by the Government of the United States prior to June 27, 1950, under and pursuant to the Military Assistance Agreement between the United States and the Republic of Korea, dated January 26, 1950?

48. What shipments of Army-procured goods were made to South Korea after the responsibility for Korean aid was transferred to ECA in January, 1949, up until June 27, 1950? ("Foreign Aid by the United States Government, 1940-1951" published by the Office of Business Economics, U. S. Department of Commerce, page 31).

49. Department of Defense, Office of Public Information, Press Branch Fact Sheet on Military Assistance to the Republic of Korea, No. 136-508 states that:

> "Following the armed invasion of Korea on June 25th, the supply of equipment and ammunition urgently needed by Korean forces is being rushed from the stocks of the Far Eastern Command in Japan."

Is the above statement true?

50. What law authorized the shipment of equipment and ammunition to the Korean forces from the stocks of the U. S. Far Eastern Command?

51. The Fact Sheet mentioned in Interrogatory No. 49 states:

> "Additional equipment, unavailable from excess or war reserve stocks of the Department of Defense, is being procured from commercial sources under new procurement contracts."

Is this statement true? If so, what law authorized the Department of Defense to contract for equipment from commercial sources to supply the Republic of Korea and what appropriation account was charged with such expenditures?

52. What official, agency or department of the United States Government made the Agreement of July 6, 1950, which was superseded by TIAS 2135 and what law authorized such agreement on behalf of the United States?

52. How much public money was drawn from the Treasury of the United States and spent to discharge obligations created by the Agreement of July 6, 1950?

53. What appropriation account was charged with the expenditures made to carry out the Agreement of July 6, 1950?

Defendant's Interrogatories

54. State whether or not before Louis Johnson, Secretary of Defense, made and issued the directive dated September 1, 1950, the military departments had made expenditures and disposed of many millions of dollars worth of U. S. property in the prosecution of the war on Korea without any statutory authorization therefor?

55. Please explain how money appropriated to the Department of Defense was used to carry on the war on Korea under the aegis of the United Nations notwithstanding the limitation imposed by the Congress by Sec. 287d-1 (a) (3) of Title 22, U. S. C. (United Nations Participation Act of 1945), authorizing the President to obligate funds appropriated to the Department of Defense solely for the support of such activities of the United Nations as are specifically directed to the peaceful settlement of disputes and not involving the employment of armed forces contemplated by Chapter VII of the United Nations Charter.

56. State whether or not it is true that United States forces waged war on Korea without any declaration of war by the Congress and without any orders of the President being published in the Federal Register either commanding the armed forces to engage in the war or directing the public money to be used for the prosecution of the war; that in establishing military occupation of that part of Korea lying south of the 38th parallel, setting up a government for that area, and waging a war in an attempt to unify Korea under that government many billions of dollars of the public money of the United States have been withdrawn from the Treasury and transferred or applied for purposes not prescribed by law but the Department of Justice has prosecuted no one for embezzlement either under Title 18, U. S. C., Sec. 653, applicable to Disbursing Officers Misusing Public Funds or Title 18, Sec. 2, providing that whoever cause an act to be done, which if

directly performed by him would be an offense against the United States, is also a principal and punishable as such?

57. Were Documents 6 (Statement by the President, June 26, 1950), 9 (Statement by the President, June 27, 1950) and 17 (Press Release by the White House, June 30, 1950) printed in "United States Policy in the Korean Crisis" Department of State Publication 3922 signed by President Truman and the seal of the United States affixed and an original and two copies forwarded to the Director of the Division of the Federal Register for appropriate action in conformity with the provisions of the Federal Registry Act and Executive Order No. 10006?

58. Are the originals, or copies, of the documents mentioned in Interrogatory No. 57 available for public inspection in the office of the Administrator of General Services or the National Archives Establishment? If not are they in the possession, custody or control of President Eisenhower or any other official, agency, branch or department of the government of the United States?

59. In Document 9 it was stated "I have ordered . . .", "I have also directed . . .", "I have similarly directed . . ." and "I have instructed . . ." certain acts to be done as set out in the document. Are those statements true?

60. Please state the basis for the answer to the preceding Interrogatory 59.

61. In Document 17 (Press Release by the White House, June 30, 1950) it is stated ". . . the President announced that he had authorized . . ." and "General MacArthur has been authorized to use certain supporting ground units . . .". Has the Government of the United States any basis for determining whether or not President Truman authorized acts to be done as set forth in said Document 17?

62. If authorizations were made or issued by President Truman as stated in Documents 9 and 17 were they verbal or written?

63. Does the Government of the United States have any record of any such orders, directives, instructions or authorizations as mentioned and described in Documents 9 and 17? If so in what form is the record and what official, agency, branch or department has the possession, custody or control thereof?

64. This defendant, as plaintiff in the case against J. M. Rountree, Director of Internal Revenue et al., Civil Action No. 1685, caused to be served upon former President Harry S. Truman on July 14, 1953, a subpoena duces tecum commanding him to produce certain memoranda, reports, orders, directives, letters and documents, to-wit:

"(a) Memorandum for the President by Mr. Henry L. Stimson, Secretary of War, dated September 11, 1945, on the subject of 'Proposed Action for Control of Atomic Bombs.'

"(b) The report of Central Intelligence Agency, Admiral Hillenkoetter, Director, warning of the danger of hostilities in Korea filed at the White House shortly before June 25, 1950.

"(c) Copy of letter written by you as the President of the United States dated July 27, 1945, addressed to K. D. McKellar, President Pro Tem. of the Senate pledging not to use the armed forces for or on behalf of the United Nations Organization without the consent of the Congress.

"(d) Copies of all orders made as President of the United States and as Commander-in-Chief of the Army and Navy for the use of the armed forces of the United States in Korea or in the general area of China or Formosa prior to June 27, 1950.

"(e) Copies of all orders and directives to the Atomic Energy Commission for the manufacture of atomic bombs and atomic weapons and hydrogen bombs or other weapons of mass destruction, from 1946, to expiration of term of office as President of the United States."

Mr. Truman made an affidavit that at the time of the service of said subpoena none of the above enumerated documents were within or subject to his control. He further stated in his affidavit that he was informed and believed that all of the memoranda, reports, orders, directives, letters and documents enumerated in the subpoena duces tecum were "secret, classified, highly confidential and privileged."

Answering specially and specifically as to each of the five items enumerated in the subpoena duces tecum, please state whether or not, either at the time of the service of the subpoena on Mr. Truman or at the time of answering these interrogatories, the items were within or subject to the control of the government of the United States and also whether or not they were "secret, classified, highly confidential and privileged" and if so, how, why and when they became or were attempted to be made such.

65. What knowledge or information does the government of the United States have as to the location and whereabouts of the documents enumerated in Interrogatory No. 64 and particularly whether or not they were among the papers, records and documents which former President Truman removed from the executive offices of the White House and carted away to Kansas City, Missouri, as his personal papers when he departed from the White House in January, 1953?

Civil Action No. 2203.

DEFENDANT'S REQUEST FOR ADMISSION UNDER RULE 36.

(Filed Aug. 3, 1956.)

Defendant Fyke Farmer requests the plaintiff United States of America within 10 days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the document attached to this request is a true copy of a memorandum or directive issued by Louis Johnson, Secretary of Defense under date of September 1, 1950, to the Secretaries of the Army, Navy and Air Force regarding the supply of materials to other governments participating in the Korean war.

2. John J. Muccio, United States Ambassador to the Republic of Korea, signed on behalf of the "Government of the United States" an agreement with the Government of the Republic of Korea regarding expenditures by forces under command of the commanding general armed forces of the member states of the United Nations, dated July 28, 1950, and superseding an agreement of July 6, 1950, which agreement was published by the Department of State as Treaties and Other International Acts Series 2135 (publication 4038).

3. Under date of May 24, 1952, Clarence E. Meyer, purporting to act as minister and special representative of the President of the United States of America, signed an agreement with the Republic of Korea on economic coordination between the Unified Command and the Republic of Korea, which agreement was published by the Department

of State as Treaties and Other International Acts Series 2593 (publication 4895).

4. President Truman, by letter directive, on or about September 29, 1950, gave the Department of the Army responsibility for civilian relief in Korea during the period of the war, with financing to be from appropriations available to the military (Budget for the Military Functions of the Department of Defense for the fiscal year 1952, House Document 120, 82nd Congress, 1st Session, page 32).

5. During the period of the Korean war the United States Eighth Army provided money, material, equipment, supplies and personnel for the following purposes:

(a) The training and outfitting of an army of South Koreans under the command of the President of the Republic of Korea and generally known as the ROK Army;

(b) The training and outfitting of forces of other nations of the United Nations participating in the Korean war;

(c) The operation of its own logistical (supply and services) command;

(d) The provision of food, clothing and medical relief for millions of refugees and homeless persons in Korea;

(e) Aiding in the physical rehabilitation of South Korea;

(f) Supplying military advisory personnel to the ROK Army;

(g) Establishing a military school system for the ROK Army;

(h) Supporting the Air Force's operations in Korea logistically;

(i) Supporting the Marine forces in Korea logistically;

(j) The rehabilitation and improvement of the Korean rail system;

(k) The extension and improvement of the Korean highways system;

(l) Supply technical advisers and aid to the several ministries of the Republic of Korea Government;

(m) Aid in rehabilitation of Korean agriculture, fisheries, manufacturing and mining, with supplies, equipment, transport, advisory services and financial assistance.

6. Louis Johnson, Secretary of Defense, was not authorized by law to authorize and direct the military departments to furnish supplies or services to the armed forces of foreign governments "participating in the Korean operation" as set forth in the directive referred to in Request No. 1 herein.

7. The "Korean operation" referred to in the directive issued by Louis Johnson, Secretary of Defense, under date of September 1, 1950, was not specifically directed to the peaceful settlement of disputes and was not an activity of the United Nations "not involving the employment of armed forces contemplated by chapter VII of the United Nations Charter" and by Title 22, U. S. C., Sec. 287d—1 (a), the President of the United States was prohibited from authorizing the military departments to furnish supplies and services for the purposes and in the manner set forth in said directive issued by the Secretary of Defense under date of September 1, 1950.

8. The expenditure of the public money of the United States in accordance with the contract or agreement with the Government of the Republic of Korea regarding expenditures by forces under command of the commanding general armed forces of the member states of the United Nations referred to in Request No. 2 herein was not for any purpose prescribed by law.

9. The expenditure of the public money of the United States in accordance with the contract or agreement with the Government of the Republic of Korea denominated Treaties and Other International Acts Series 2593 referred to in Request No. 3 herein was not for any purpose prescribed by law.

10. The expenditure of the public money of the United States for the purposes set forth in Request No. 5 herein was not for any purpose prescribed by law.

11. For the reason stated in Request No. 7 herein, the furnishing of supplies and services for the purposes set forth in Request No. 4 herein was prohibited by Title 22, U. S. C., Sec. 287d—1 (a).

12. At the outbreak of the war in Korea 66 transports were leased from commercial transport lines by the Department of the Air Force to move men and material to United Nations forces in Korea (Report of Secretary of Defense for period Jan. 1 to June 30, 1951, page 204).

13. There was no statute making an appropriation, or authorizing the expenditure of money, for the object or purpose stated in Request No. 12, supra.

14. In September, 1954, the Executive Office of the President, Bureau of the Budget, put out a folder, "Your Federal Budget," on the front page of which was printed Article I, Section 9, of the Constitution of the United States and in the text of which folder the following statement is made: "Under our Constitution, no one in the Government may spend money until an appropriation law is enacted by Congress."

15. Notwithstanding the Constitution and the above-mentioned assurance by the Executive Office of the President, Bureau of the Budget, billions of dollars have been drawn from the Treasury and spent for the purpose of

(Document Referred to in Request No. 1)

maintaining military occupation of South Korea, setting up and keeping in power a puppet regime, and in waging war to support the attempt of that regime to extend by force its authority over the whole of Korea without any appropriations ever having been made by law therefor; and the criminal laws defining such misapplication of public money as embezzlement and prescribing punishment therefore remain unenforced.

(DOCUMENT REFERRED TO IN REQUEST NO. 1.)

Department of Defense.

1 September, 1950.

Subject: Utilization of Offers of Foreign Assistance in Korea.

1. The purpose of this memorandum is to provide interim guidance to the military departments in connection with military assistance by foreign nations to General MacArthur's operations in Korea.

2. When foreign offers of military assistance have been accepted by the U. S. Government, the several Services are authorized to enter into direct negotiations with the foreign representatives concerned, in order that prompt operational plans may be developed, and the necessary logistic support be rendered to the armed forces of those nations participating in the Korean operation.

3. It is the policy of the Department of Defense to make available to foreign forces which the Department of Defense determines to be capable of effective participation in the Korean operations necessary logistic support and supplies which the foreign governments themselves cannot furnish. Each military department is therefore authorized

(Document Referred to in Request No. 1)

to furnish such supplies or services, and to the extent determined necessary by that department, to charge them to their appropriations or funds available for the service or supplies furnished. The Department of Defense shall maintain appropriate accounts showing the costs involved in furnishing such assistance, which will serve as a basis for reimbursement. The several services should seek arrangements under which the foreign governments will completely equip and supply their forces. To the extent that such complete support is not practicable but the offer is otherwise desirable, the military departments of the United States will make available necessary supplies or services on a basis of immediate reimbursement in U. S. dollars. To the extent that the foreign Government cannot make prompt reimbursement in U. S. Dollars, the U. S. Government and the foreign government will negotiate the terms of settlement. Such reimbursement or settlement, however, shall be without prejudice to any existing arrangements whereby the military departments obtain direct cash payment for services or supplies furnished to foreign countries.

4. Where the terms of such settlements as may be arrived at between the U. S. Government and the foreign government provide for payment to the U. S. Government in dollars, reimbursement to military appropriations will be provided as authorized by law; if foreign currencies are realized as a result of such settlements, they shall, so far as practicable, be available to the military departments for authorized use.

5. Negotiations between the several Services and foreign representatives concerning military and financial matters will be carried on with full knowledge of the Departments of State and Treasury.

/s/ LOUIS JOHNSON.

Civil Action No. 2203.

MOTION OF PLAINTIFF FOR ORDER REQUIRING DEFENDANT TO ANSWER INTERROGATORIES.

(Filed Aug. 27, 1956.)

Comes the defendant, Fyke Farmer, and moves the Court for an order compelling the plaintiff, the United States of America, to answer the interrogatories heretofore filed in this action and served upon the plaintiff on August 3, 1956.

Civil Action No. 2203.

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS.

(Filed Sept. 26, 1956.)

The United States of America, the plaintiff above-named, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, moves for judgment on the pleadings in its favor and against the defendant, upon the ground that the answer fails to allege any defense to the cause of action alleged in the complaint.

Civil Action No. 2203.

MOTION FOR JUDGMENT ON THE PLEADINGS DENIED.

(Received for Entry September 26, 1956.)

A pre-trial conference in the above-entitled action having been held before me on the 25th and 26th days of Sep-

tember, 1956; and the United States of America having filed its motion for judgment on the pleadings herein on September 26, 1956; and the defendant having moved that ten days be allowed him for serving opposing affidavits and otherwise resisting the plaintiff's said motion under Rule 56 (c), Federal Rules of Civil Procedure; it is

Ordered that the defendant's motion be, and the same hereby is denied; and it is further

Ordered that the defendant, in lieu of filing affidavits or taking depositions, have until October 5, 1956, to file any amendment to his answer, alleging any further facts or making such further allegations as he deems necessary or proper to develop a genuine issue of fact, and that the plaintiff have until October 9, 1956, to file any responsive pleading thereto; that the defendant shall file with his amended pleading any brief or memorandum in support thereof on October 5, 1956, and that the United States shall file any brief or memorandum in support of its motion on October 9, 1956; and it is further

Ordered that decision upon all other matters pending in this case shall be reserved until decision upon the United States' motion for judgment on the pleadings.

UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

FYKE FARMER
vs.
J. M. ROUNTREE et al. } Civil No. 1685.

WALTER E. STYLES
vs.
UNITED STATES OF AMERICA } Civil No. 1934.

UNITED STATES OF AMERICA
vs.
FYKE FARMER. } Civil No. 2203.

ORDER.

(Received for Entry October 5, 1956.)

In these causes, by consent of the parties, it is Ordered and Adjudged;

1. The notice served on September 14, 1956, by the defendant Fyke Farmer, in the case of United States of America v. Fyke Farmer, No. 2203, to take the deposition of Harry S. Truman, on October 15, 1956, is vacated without prejudice, and the case is dismissed as against the First National Bank of Springfield.

2. The time of plaintiff Fyke Farmer in case No. 1685, the plaintiff Walter E. Styles in case No. 1934, and the defendant Fyke Farmer in case No. 2203, for filing any amendments to pleadings and briefs is extended until October 8, 1956, and the time of the opposite parties in said cases to file any response and briefs is extended until October 16, 1956.

UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

UNITED STATES OF AMERICA
v.
FYKE FARMER et al.

Civil Action No. 2203.

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS.

(Filed Oct. 16, 1956.)

The United States of America, the plaintiff above-named, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, moves for judgment on the pleadings, as amended, in its favor and against the defendant, upon the ground that the answer, as amended, fails to allege any defense to the cause of action alleged in the complaint.

Civil Action No. 2203.

OBJECTIONS OF DEFENDANT TO MOTION FOR JUDGMENT ON THE PLEADINGS.

(Filed Oct. 16, 1956.)

The Defendant, Fyke Farmer, objects to the plaintiff's motion for judgment on the pleadings in its favor and against the defendant, upon the ground that the answer fails to allege any defense to the cause of action alleged in the complaint and says:

The question of the liability of this defendant for the assessment of income tax for the calendar year 1949 is involved in the action of Fyke Farmer v. J. M. Rountree, Director of Internal Revenue for the District of Tennessee, Frank Taylor, Deputy Collector of Internal Revenue, and

Order

First National Bank, Springfield, Tennessee, Civil No. 1685, presently pending in this court. Precisely the same questions of law on which the plaintiff in this action bases the motion for judgment on the pleadings were raised by the defendants in Civil Action No. 1685 by motions to dismiss the complaint and the complaint as amended and have previously been adjudicated by the Honorable Elmer D. Davies, presiding over Division I of this court, by the orders denying the defendants' motions to dismiss entered on April 7, 1954, and August 5, 1955, and the rulings of Judge Davies are the law of the case which is binding upon the judge of Division II sitting in this case.

Wherefore, defendant prays that the motion for judgment on the pleadings be denied.

UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

FYKE FARMER vs. J. M. ROUNTREE, Director, et al.	Civil Action No. 1685.
WALTER E. STYLES vs. UNITED STATES OF AMERICA.	Civil Action No. 1934.
UNITED STATES OF AMERICA vs. FYKE FARMER et al.	Civil Action No. 2203.

ORDER.

(Received for Entry October 16, 1956.)

By consent of the parties, and with the approval of the Court, the defendants in Civil No. 1685 and Civil No. 1934,

and the plaintiff in Civil No. 2203, adopt the complaints and other responsive pleadings heretofore filed by them and rely upon same as responses to the amendments filed in each of the above cases by Fyke Farmer and Walter E. Styles on October 5 and 9, 1956.

In the
UNITED STATES DISTRICT COURT
For the Middle District of Tennessee,
Nashville Division.

UNITED STATES OF AMERICA, Plaintiff, v. FYKE FARMER and FIRST NATIONAL BANK, Springfield, Tennessee, a Corporation, Defendant.	Civil Action No. 2203.

JUDGMENT AND DECREE.

(Received for Entry November 16, 1956.)

United State of America, the plaintiff above named, by Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, having moved for judgment in its favor, as demanded in the complaint, upon the ground that the answer of the defendant Fyke Farmer raises no issue and alleges no facts sufficient to constitute a defense to the cause of action alleged in the complaint; and the said motion having duly come on to be heard; and, after hearing Mr. Frederic G. Rita, Attorney, Tax Division, Department of Justice, in support of said motion, and the defendant, Mr. Fyke Farmer, *in propria persona*, in opposition thereto; and on September 17, 1956, the Court having filed its opinion sustaining the plaintiff's said

motion; and the defendant First National Bank, Springfield, Tennessee, having filed an answer herein averring that it had been relieved of any further liability by order of this Court entered in Civil Action No. 1685 discharging it from liability in the premises upon depositing with the registry of the Court the sum of $6,750.00, it is

Ordered, Adjudged and Decreed that the said motion of the United States of America be and the same hereby is in all respects granted; and it is further

Ordered, Adjudged and Decreed that plaintiff, United States of America, recover of the said defendant, Fyke Farmer, the sum of $4,706.56, with interest from July 17, 1950, and costs to be taxed; and it is further

Ordered, Adjudged and Decreed that the Clerk of this Court pay to the Director of Internal Revenue for the District of Tennessee out of the said sum of $6,750.00 deposited in the registry of the Court by the defendant First National Bank, Springfield, Tennessee, pursuant to the said order duly entered in Civil Action No. 1685, the sum of $4,706.56 with interest from the 17th day of July, 1950, together with plaintiff's costs and pay to Fyke Farmer the balance; and it is further

Ordered, Adjudged and Decreed that this action be dismissed as against First National Bank, Springfield, Tennessee, without costs.

Enter:

/s/ WM. E. MILLER,
United States District Judge.

Approved for entry:

/s/ FRED ELLEDGE, JR.,
Attorney for Plaintiff.

/s/ FYKE FARMER,
Attorney for Defendant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 975

FYKE FARMER,
Petitioner,

vs.

J. M. ROUNTREE, Director of Internal Revenue, et al.,
Respondents.

FYKE FARMER,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

FYKE FARMER, Pro Se,
300 West Bellevue Drive,
Nashville 5, Tennessee.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. .....

FYKE FARMER,
Petitioner,

vs.

J. M. ROUNTREE, Director of Internal Revenue, et al.,
Respondents.

FYKE FARMER,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

Petitioner Fyke Farmer asks that a writ of certiorari issue to review the judgments entered in these two cases on February 12, 1958, by the United States Court of Appeals for the Sixth Circuit. The two cases involve identical or closely related questions. As is permitted by Rule 23 (5) a single petition is presented covering both cases.

OPINIONS BELOW.

The memorandum opinion of the United States District Court for the Middle District of Tennessee sustaining motions for judgments on the pleadings in both cases, dismissing petitioner's action in the **Rountree** case and rendering a judgment in favor of the United States of America on its complaint against petitioner in the other case, has been reported at 149 F. Supp. 327.

The opinion of the Court of Appeals affirming the judgment of the district court was rendered February 12, 1958, and has been reported at 252 F. 2d 490. Petitioner filed a petition for a rehearing. On March 13, 1958, the Court of Appeals entered an order modifying its opinion on a point not presently material to this application for certiorari and denied a rehearing. The Court of Appeals has ordered the mandate stayed until May 5, 1958, pending application to the Court for certiorari, the stay to remain effective until disposition of the case in this Court provided the petition is filed within that time.

Copies of both opinions of the Court of Appeals are printed as Appendix A to this petition. The opinion of the District Court is printed in the Appendix filed in the Court of Appeals, nine copies of which are filed in this Court.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. A. 1254 (1).

QUESTIONS PRESENTED.

1. Does the Constitution authorize the taxing of United States citizens for the commission of crimes against peace, war crimes and crimes against humanity as defined by the Nuremberg Charter?

2. Is the Government invested by the Constitution with discretionary and uncontrollable foreign relations and taxing powers so wholly free from judicial inquiry and examination that the judicial power does not extend to the interpretation of the Constitution, the treaties and laws (including international law) and basing a judgment on well-pleaded allegations of facts showing the use of the principal part of the public revenue to cover the cost of such crimes, though the facts are admitted by the Government as a suitor invoking judicial aid for the collection of a tax from a citizen standing on his constitutional rights of conscience under the Federal and State Constitutions and claiming an immunity from being taxed for the support of such crimes.

3. Is the judgment rendered in the suit in favor of the Government refusing to pronounce judgment on the admitted facts and turning a fund belonging to the citizen on deposit in the registry of the court over to the Government contrary to public policy void for lack of due process of law guaranteed by the Fifth Amendment?

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES INVOLVED.

The constitutional provisions which are relevant to decision of this case are those contained in Articles I and II conferring powers with respect to war and foreign relations; the power conferred upon the Congress by Article I, Section 8 to lay and collect taxes for the "common defence"; the treaty power conferred by Article II, Section 2; the provisions of Article III extending the judicial power to all cases arising under the Constitution, the laws and treaties of the United States and to controversies to which the United States shall be a party; the Bill of Rights guaranteeing individual liberty and due process of law, especially Amendments I, V, IX and X; and the clause in

the Declaration of Rights of the Tennessee State Constitution reserving the right of conscience from control by any "human authority."

The treaties involved are the Treaty for the Renunciation of War; the United Nations Declaration and the Atlantic Charter; the Charter of the United Nations; the executive agreements providing for the creation of international military tribunals for the trial of war criminals following World War II and the charters of those tribunals; and certain international agreements and assurances of the United States and other United Nations governments during and after World War II pledging the fulfillment of the United Nations war aims through the elimination of military force in international relations and the building of world order under law, dedicated to peace, security, freedom and general well-being of mankind.

The statutes involved are the United Nations Participation Act of 1945, as amended; Tit. 22, U. S. C. A., declaring the United States policy as to settlement of international disputes and disarmament; and the provisions with respect to foreign wars and neutrality carried into Chapter 9 of Tit. 22, U. S. C. A.

Since these provisions are lengthy, their pertinent text is set forth in the appendix.

STATEMENT.

The question in both of these cases concerns the liability of petitioner for an assessment of a Federal Income Tax of $4,733.95 against him on his 1949 income. He refused payment on the ground that two-thirds of the money would be paid out of the Treasury for the cost of war and war activities amounting to crimes under international law.

1. The Injunction case (Farmer v. Rountree).

When the assessment was made in July, 1950, the armed forces of the United States were engaged in the war in Korea. Petitioner, believing this war on the part of the United States Government to be one of aggression and, therefore, a crime against peace under international law, claimed the right under the Constitution and international law to avoid any complicity in the crime through the payment of taxes required to support it. He, accordingly on this ground and relying on his constitutional right of conscience protested the demand for payment of the assessment to both the Commissioner of Internal Revenue and to President Harry S. Truman.

After the 1952 election of President Eisenhower petitioner tendered to him one-third of the amount of the assessment upon the condition that this payment be not deposited in the General Fund of the Treasury, but segregated in a special account or fund subject only to appropriations for the lawful and constitutional civil functions of government and so that no part thereof could be spent for the planning, preparing, initiating or waging of war.

Finally, in April, 1953, this tender was refused. A deputy collector of internal revenue delivered back to petitioner the certified check for $1,803.61 representing his tender and attempted to collect the tax by levying a warrant of distraint on a deposit belonging to petitioner in the First National Bank of Springfield, Springfield, Tennessee.

Thereupon, petitioner instituted an action in the United States District Court for the Middle District of Tennessee, Nashville Division, to obtain a judicial determination of the question of his liability for the tax and to enjoin the Director of Internal Revenue and his deputy from completing the distraint and the bank from paying over the fund under the demand for payment made upon it by the deputy collector. He renewed his tender in his complaint.

The bank interpleaded and pursuant to leave of court paid the entire deposit of $6,750.00 into the registry of the court. No application for an injunction was made and no injunction was issued.

Motions to dismiss petitioner's complaint having been denied, the defendants filed an answer. With respect to most of the material averments of the complaint, the defendants (whose answer was prepared by the Attorney General) said that for want of sufficient information they were unable either to admit or deny the allegations. Their answer, however, did admit the paragraph of the complaint averring that:

> "According to official reports and estimates, only one-third of the federal revenue was being used for the lawful, civil function(s) of the government at the time of the assessment and the placing of the lien against plaintiff's property."

After answer filed, the case was set for trial on September 25 and 26, 1956.

2. The Suit of the Government to Collect the Tax.

The complaint in United States of America v. Fyke Farmer and First National Bank, Springfield, Tennessee, was filed in the United States District Court for the Middle District of Tennessee May 31, 1956. It alleged that the United States of America was "a corporation sovereign and body politic." It set up the assessment against petitioner of the income tax for the year 1949. It alleged that the sum of $6,750 was on deposit in the registry of the court to cover the amount of the tax, said sum having been deposited in pursuance to an order of court entered in the action above mentioned. It alleged that no part of the tax had been paid. The complaint asked for a judgment against petitioner for the full amount of the assessment

and the foreclosure of the lien of the United States upon the deposited fund.

The answer of the bank disclaimed any interest in the deposit.

Petitioner's answer admitted the assessment and that no part of it had been paid. It denied that the plaintiff, United States of America, was entitled to a judgment against him for the reason that he was not constitutionally obligated for the payment of the tax. It set up as a defense the pendency of the case of **Farmer v. Rountree**, the denials of the motions to dismiss his complaint, the answer filed by the defendants, and that the case had been set for trial September 25, 1956. It set up the tender made by petitioner prior to the attempted distraint which was renewed when he brought the action to enjoin the collection of the tax, and an amendment to his complaint tendering the full amount of the assessment with interest to be paid out of the fund deposited in the registry of the court provided that it be deposited in a segregated or special account in the Treasury on the conditions above mentioned.

In his answer petitioner averred:

> "At the time the assessment was made, and ever since that time, by far the larger part of the federal revenue was and has been and is still being used by the legislative and executive branches of the government (acting outside the scope of any powers conferred upon them by the Constitution) for the commission of crimes against peace, war crimes and crimes against humanity in violation of international law, which is part of the law of the land of the United States and to which the United States is subject.
>
> "This defendant, in obedience to the dictates of his conscience, has felt and does now feel that it would be wrong for him to take a supporting (or even a con-

senting) part in any degree in the activities of the government mentioned. He feels that the payment of taxes (or submission to coercion applied for the enforced payment or collection of the revenue) would render him personally guilty of complicity in the aforesaid crimes. Because of his conscientious scruples against participation as a taxpayer in the commission of crimes against peace, war crimes and crimes against humanity, defendant has refused payment of any assessment against him on account of the 1949 income.

"Defendant is desirous of contributing his due and lawful share of the revenue necessary to support and maintain the lawful, civil and constitutional functions of the government under the Constitution. He has endeavored to do this but has been unable to get the government to accept payment under conditions that would protect him from the guilt of complicity in its criminal acts and activities mentioned that he feels would arise if taxes paid are deposited in the General Fund of the Treasury from which money is withdrawn to finance such criminal acts and activities."

Printed Answer (Exhibit to Appendix in Court of Appeals), Sec. VI, pp. 4-5.

In Sec. XIX of his printed answer at pages 110 to 114, petitioner set forth facts showing the consistency with which he has maintained his personal stand in opposition to war and war planning. He averred:

Defendant shows to the Court that his international rights to refuse to be made an accomplice in the crime of planning and preparing war in violation of the Nuremberg Law will only be respected and upheld through exercise of the judicial power. He has appealed in vain to the legislative and executive branches of the government.

Then follows a history of certain of petitioner's acts, efforts and appeals, after which he averred:

> In many other ways, limited by defendant's ability and means, he has opposed the fatuous attempt of the government to impose the rule of force on the world and sought to bring about the rule of law to abolish war. He believes that war can be abolished. He feels that his case testing whether the Nuremberg Law will be allowed to fade into oblivion until after another holocaust is of supreme national and international importance. He stands on his rights of conscience guaranteed by the First, Fifth, Ninth and Tenth Amendments to the Federal Constitution and upon the clause in the Declaration of Rights of the Tennessee Constitution providing that
>
> > ". . . no human authority can, in any case whatever, control or interfere with the rights of conscience."
>
> He says that his conscience tells him that the war planning, preparing, initiating and waging described in his answer are for aggression and violative of the Nuremberg Law; that he is compelled by reason of the dictates of his conscience to take the moral choice of refusing to render any support whatsoever in such war activities of the government. He feels that the right which he is claiming is a basic human right which it is the duty of the United Nations to recognize and uphold even against the government of the United States. He says that the jurisdiction of this Court in this case is limited to ascertaining whether the defendant has refused payment of the assessment, the enforcement of which is sought in this proceeding on a bona fide claim of an international right and on such finding to deny the government of the United States the relief sought for the collection of the tax.
>
> Printed Answer, page 114.

3. **Basis for Federal Jurisdiction in the District Court.**

In the injunction case, jurisdiction of the district court was invoked under Title 28, U. S. C. A., Sec. 1331, and under Art. III, Sec. 2 of the Constitution, the case being one under the Constitution, the laws and treaties of the United States. Petitioner alleged grounds for equitable intervention and the inapplicability of Sec. 3653 of the Internal Revenue Code prohibiting courts from restraining the collection of internal revenue taxes by showing that he would be without remedy to recover the tax after payment into the Treasury, because of

a) The inability of the United States to refund the entire amount of taxes illegally collected to cover the costs of the international crimes the Government was committing; and

b) The fact that the accounts of the Government were not so kept that petitioner could prove with sufficient definiteness and certainty the amount he would be entitled to recover.

The basis for jurisdiction in the Government's suit is Title 28, U. S. C. A., Sec. 1345, and Article III, Sec. 2 of the Constitution, it being a controversy to which the United States is the party petitioner or plaintiff.

The fact that actual fighting, i. e., the waging of war, in Korea had ceased at the time the Government brought its suit was not considered by the courts below as making any difference in the issues in the two cases. No such insistence has been made by the Government, presumably because of the rule that the jurisdiction of a court is to be determined by the state of facts existing at the time a suit is brought. **Mollan v. Torrance, 9 Wheat. 154; Minneapolis & St. L. R. Co. v. Peoria & P. U. R. Co., 270 U. S. 580.**

4. The Rulings in the District Court.

Two motions to dismiss were filed in the injunction case. Both raised the question that the district court was without jurisdiction because the complaint did not state a case or controversy within the jurisdiction of the court under Article III, Sec. 2 of the Constitution (App. pp. 53a and 96a). Judge Elmer D. Davies, one of the judges of the district court overruled both motions (App. pp. 95a and 101a).

Instead of a trial of the injunction case on September 25, 1956, a pre-trial conference was held. Another judge of the district court, the Honorable William E. Miller, sat in the hearings. Upon the court's suggestion, at the second day of the pre-trial conference, the Government presented motions for judgments on the pleadings in both cases. Orders were entered granting leave to file the motions, requiring petitioner to bring forward any additional matter by amendment to his pleadings and excluding all matters outside the pleadings. These orders further denied petitioner's motions for opportunity to resist the motions for judgments on the pleadings by depositions, interrogatories and requests for admission that had been filed by petitioner in the two cases and otherwise as contemplated by Rule 56 (c) of the Federal Rules of Civil Procedure. The court correctly stated that for the purpose of the disposition of the motions for judgments on the pleadings, the court was required to assume that all of the allegations of petitioner, including the allegation that the Korean War was a war of aggression, were true.

Subsequently, the motions for judgments on the pleadings were granted in both cases. The court filed a memorandum setting forth the grounds and reasons for the decision, which as above stated has been reported at 149 F. Supp. 327 and appears in the Appendix filed in the Court of Appeals at pages 125a-131a.

The decision was based, not on the ground that the factual averments in petitioner's pleadings were insufficient to state a case upon which any relief could be granted but, chiefly upon the ground that his claims could not be legally supported" and that the court lacked jurisdiction "to adjudicate facts essential to the taxpayer's case." It was not necessary, however, to resolve or find the facts from conflicting evidence for the facts were admitted by the motions for judgments on the pleadings.

Petitioner contended that the question of jurisdiction had been settled by the previous denial of the motions to dismiss in the injunction case. The second judge, however, in his memorandum held that the orders overruling the motions to dismiss "in effect reserved a ruling upon that question." This finding is utterly unsupported by anything appearing from the face of the orders or otherwise shown by the record.

5. The Affirmance of the Judgment by the Court of Appeals.

The Court of Appeals in a short per curiam opinion concurring in the opinion of the district court said:

> "The claims . . . involved political and governmental questions which are confided by the Constitution to the legislative and executive branches of the government, and over which the courts have no jurisdiction."

Petitioner filed a petition to rehear bringing again squarely to the attention of the court the questions which he was raising in these words:

> "The ground of appellant's refusal to pay the 1949 income tax assessed against him set up in his complaint in Case No. 13,198 was that the money if paid into the Treasury would be spent in principal part for the waging of the Korean War, alleged to be a war

of aggression and a war in violation of international treaties, agreements and assurances and hence, an international crime. Such authority as may be vested in the Congress to levy taxes, to appropriate public revenue for the common defense and general welfare of the country and the powers of the executive and legislative branches with respect to foreign policy are subject to the prohibition from treaties constituting the law of the land and from international law against war for aggression **or** in violation of treaties, etc.

"The question raised by appellant was whether the executive and legislative departments had exceeded their powers. As appellant's individual rights of personality and property were directly involved in the attempt to coerce payment of the tax, the issues were judicial and not purely 'political.'"

This part of the petition to rehear was denied without further opinion.

REASONS FOR GRANTING THE WRIT.

I. **The Court of Appeals has Decided Important Questions of Federal Law in Conflict With Applicable Decisions of this Court and Has so far Sanctioned Such a Departure by the District Court From the Accepted and Usual Course of Judicial Proceedings as to Call for an Exercise of This Court's Power of Supervision.**

a. **The denial of due process of law.**

There is absent from this litigation any question of immunity of the sovereign from being sued. When the Government brought suit against petitioner to collect the tax it submitted the issues which petitioner had raised in the injunction case for judicial decision. There is no rule that jurisdiction can be split so that the court could render judgment **for** but not **against** the Government. In **Lucken-**

bach S. S. Co. v. Norwegian Barque Thelka, 266 U. S. 328, Mr. Justice Holmes, delivering the opinion of the Court declared:

> "When the United States comes into court to assert a claim, it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter."

Accord: **United States v. Nourse, 6 Pet. 470; United States v. Dela Maza Arrendo, 6 Pet. 691; United States v. The Nuestra Senora de Regla (The Nuestra Senora de Regla), 108 U. S. 92; Clinkenbeard v. United States, 21 Wall. 65; United States v. Myers, Fed. Case No. 15,846, 3 Hughes 239, 27 Fed. Cases 43; U. S. v. Nebraska Distilling Co., 80 Fed. 285; Freeman v. United States, 157 Fed. 195; U. S. v. Bank of America, 15 Fed. 730.**

Judge Augustus N. Hand in **Bank Line Ltd. v. United States, 163 F. 2d 133 (2d C. C. A.),** declared:

> "It has been the policy of the American as well as of the English courts to treat the government when appearing as a litigant like any private individual. Any other practice would strike at the personal responsibility of governmental agencies which is at the base of our institiutions."

A district court has declared that where the United States is a party litigant, it occupies no different or better position than the "humblest citizen." **Krug v. United States, 18 F. Supp. 242.**

If petitioner had failed to set forth in his pleadings facts showing what the crimes are that the tax money paid into the Treasury supports, there might be justification for the summary dismissal of his claims. But during the five years that the claims asserted by petitioner have been in litigation, no particular insufficiency of his factual allegations has been pointed out by **anyone.** The Government

did not see fit to test petitioner's answer to its complaint for insufficiency of the defense by motion to strike as authorized by Federal Rule of Civil Procedure 12 (f). At the pretrial conference, after petitioner had filed a Request for Admission under Rule 36 which had not been answered (Appendix 161a) and interrogatories (Appendix 147a), which had not been answered and petitioner had moved for an order of court requiring the Government to answer the interrogatories (Appendix 167a), there was still no question as to the truth of the facts pleaded by petitioner. The following colloquy occurred:

> The Court: Let's look at it this way: Let's suppose that the Court agrees with you in everything that you say you can prove. Everything! And then still is of the opinion that you have no cause of action, then do you think that I should afford you the right to take depositions?
>
> Mr. Farmer: Yes, sir, I think so.
>
> The Court: On what basis?
>
> Mr. Farmer: Because this case may be appealed, and on appeal these issues are tendered and I think that your Honor would have to say that on the theory of the case which I present—that is, that international law does apply, that this international law does constitute a basis for my assertion of individual rights.
>
> The Court: Well, that's a question of law, isn't it?
>
> Mr. Farmer: But I have a right to prove the facts, to show the facts and circumstances and conditions on which I insist this law applies to me.
>
> The Court: You mean you think facts would make the international law applicable when it is not applicable on its face——
>
> Mr. Farmer: I think it is a question of application, of the operation of the acts and policies and measures of the government, and how they affect me individually, and that evidence is therefore proper and that I have a right to introduce evidence to support that.

The Court: You would have that right, but suppose the Court says that everything that you are going to prove is accepted as true, the statements that you make that you are going to prove, suppose the Court should agree with that. **I am assuming that you can prove it** and still you have no cause of action. Then, do you think I ought to put down an order to let you take this proof, when I know it is immaterial and won't help your cause of action. There is no arbitrary right to take proof if a person has no claim in it.

Mr. Farmer: As I understand it, the government does not agree that these are the facts.

The Court: I am not going to approach this thing on any such basis, **I'm going to say that your version is true.**

Mr. Farmer: Yes, sir.

The Court: If there is a difference of opinion about the facts, and that conflict is one which is material to the legal rights of the parties, then, of course, I couldn't. . . . (Emphasis added.)

Counsel for the Government following this colloquy presented the motions for judgments on the pleadings after the following colloquy occurred:

Mr. Rita: We will make those motions in both cases immediately, your Honor.

The Court: All right, then, I will allow you to file motions for summary judgment.

. . .

The Court: . . . **Now, as I understand your motion, you are not having any affidavits or anything of that kind? You are saying that there is no issue of fact presented; that it is just a question of law.**

Mr. Rita: **Yes, sir.**

The Court: **That's the way I understood it from your opening statement.** . . . (Emphasis added.)

Notwithstanding the statements by the court, to which no objection was made by Government counsel, that the court would assume that petitioner could prove his allegations, in the memorandum sustaining the motions for judgments on the pleadings, the court said:

> But giving the taxpayers the benefit of all factual allegations of their pleadings, whether admitted or denied by the Government, it is apparent that their claims cannot be legally supported and that no amount of proof could give them validity.
>
> Appendix, page 127a.

The ruling above quoted indicates a very serious misconception of the legal consequence attaching to the motions for judgments on the pleading. Until the rendition of this decision it has always been held, so far as petitioner is aware, that the movant making a motion for judgment on the pleadings admits the truth of all material allegations of fact in his adversary's pleadings notwithstanding any denials of those facts in his own pleadings. In the case at bar no reply had been filed to petitioner's answer in the Government's suit and though the effect of the answer of the defendants in the injunction case neither admitting or denying the allegations of petitioner's complaint as amended was that of a denial (Federal Rules of Civil Procedure No. 8), no facts had been set up by the Government in any way contradicting those alleged by petitioner.

The rule of law governing the decision on the motions for judgments on the pleadings in these cases has been laid down by this Court in a number of cases. In **Ickes v. Fox, 300 U. S. 82,** Mr. Justice Sutherland, speaking for the Court, declared:

> "The motion to dismiss concedes the truth of these allegations; but even if they were denied we should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents

might be able to prove them. United States v. Lee, 106 U. S. 196, 218, 219, 27 L. ed. 171, 181, 1 S. Ct. 240; cf. Tindal v. Wesley, 167 U. S. 204, 213 et seq., 42 L. ed. 137, 142, 17 S. Ct. 770."

Holding in **Chastleton Corp. v. Sinclair, 264 U. S. 543,** that a Federal statute depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed, the Court remanded a suit attacking the District Rent Acts to the District Court in order that "the facts may be accurately ascertained and are carefully weighed." Mr. Justice Holmes, delivering the opinion of the Court, said:

> "*Without going beyond* the limits of judicial knowledge, we can say at least that the plaintiff's allegations cannot be declared offhand to be unmaintainable, and that it is not impossible that a full development of the facts will show them to be true."

In **Hale v. Henkel, 201 U. S. 41,** the Court ruled:

> "The difficulty of maintaining a case upon the available evidence is a danger which the law does not recognize. In prosecuting a case, or in setting up a defense, the law takes no account of the practical difficulty which either party may have in procuring testimony. It judges of the law by the facts which each party claims, and not by what he may ultimately establish."

The United States Court of Appeals for the Eighth Circuit in **Louisiana Farmers' Protective Union v. Great A. & P. Co., 131 F. 2d 419,** has stated the controlling principles in these words:

> "The district judge was unable to believe the allegations of the complaint, that all of the strawberry growers in Louisiana who shipped strawberries in

interstate commerce were members of the appellant union, or that all of them assigned their claims to appellant. . . .

"It may be that the conclusions drawn by the district judge will prove correct when the evidence is in, but they are of a character usually drawn from the evidence after a hearing and not from the bare allegations of the pleadings. . . .

. . . . . .

". . . no matter how improbable it may be that the plaintiff can establish the allegations of its complaint it is, nevertheless, entitled to the opportunity to make the attempt. The opinion of the district judge, in advance of a hearing, as to the impossibility of proof of a cause of action fairly stated, is not decisive of the rights of the parties. And see Sparks v. England, 8 Cir., 113 F. 2d 579, 581."

Not only did the district court rule that petitioner's facts were not legally true. The opinion assumed facts which were not established in any way. Postulating that the executive and legislative departments had made "considered judgment" that the foreign and military policies were for "the legitimate purpose of national security or for the preservation of essential interests of the United States," the court held such putative decisions or judgments to be within the exclusive province of the political departments and not judicially examinable. From what source this information was obtained was not disclosed. As the fifth paragraph of the opinion shows, petitioner alleged facts negativing the court's assumption. The court was on notice that petitioner would offer proof to sustain his allegations. Considerations of fairness required that the court, if it had changed its mind after the assurance at the hearing that petitioner's version of the facts would be accepted as true, inform petitioner and give him

an opportunity to offer evidence on the issue. The practice of basing judgments on matter judicially noticed that is disputable was disapproved in **Ohio Bell Tel. Co. v. Public Utilities, 301 U. S. 292.**

In Volume I of American Law Institute's "Basic Problems of Evidence" (March, 1954) at page 14 it is stated:

> "**Procedure.** If the judge intends to take judicial notice of any matter, he should inform counsel of the proposition to be noticed and give them an opportunity to procure and present all relevant information as to the propriety of noticing the matter and as to the contents of the proposition. Rule 804 of the E. L. I. Code so provides. This is probably the usual practice, and considerations of fairness require it."

The question here is not whether "considered" judgment was made, but of **authority.** Let us take the matter of the Korean War. Congress has the constitutional power to declare war but it made no judgment that the war was necessary for the defense of the United States. By the United Nations Participation Act of 1945 as amended by the act of Oct. 10, 1949, the President was restricted as to the use of the armed forces. (See Appendix B herein.) No agreement had been negotiated with the Security Council of the United Nations making available any armed forces, facilities or assistance. The President's authority was limited to furnishing a detail of not more than 1,000 men for non-combatant service in the peaceful settlement of disputes. In ordering General MacArthur to engage the armed forces of the United States in the civil war in Korea under the "aegis" of the United Nations, President Truman plainly exceeded his authority.

Congress did not subsequently ratify the President's actions. It passed no act or joint or concurring resolution for this purpose. It made no appropriation specifically for

carrying on the war by the United States armed forces and those of the other United Nations members engaged in the "operation."

Petitioner's request for admission and interrogatories filed in the Government's suit (Appendix pp. 147a-166a) would have established that the war was financed by misapplication of the public money constituting the offense of embezzlement. The war costs ran into unascertained billions of dollars. Yet, the authority of the President to supply military equipment and services to foreign governments was strictly limited and conditioned by Sec. 421 of Title 22, U. S. C. A. (Appendix herein page 68). There is no pretense that the procedures required by this law were followed when Secretary of Defense Louis Johnson issued the memorandum directing the military departments to furnish logistic support and supplies to foreign governments to support "General MacArthur's operations in Korea" (Appendix 165a).

The truth of the matter—as shown by the record in these cases—is that when petitioner filed his suit the Treasury was being raided in complete defiance of the laws to carry on the illegal and criminal war. Only instead of carting off the money from the Treasury in trucks, they accomplished the siphoning off by "directives," presumably authorized by the Chief Executive who took an oath to faithfully perform the duty of taking "care that the Laws be faithfully executed."

If there was any fact not disclosed by the record that was deemed material to decision on the motion for judgments on the pleadings, any assumption that the court might make was required to be that which was less favorable to the Government. So this Court has held. **Clark v. Allen, 331 U. S. 530.** Cf. **Lanasa Fruit S. S. & I. Co. v. Universal Insurance Co., 302 U. S. 556.** The district court, by its arbitrary assumption which was made the basis for

a non-jurisdictional finding clearly violated that well-settled rule of law. The error was not merely procedural. It went to petitioner's substantive right to **law.** The right of a citizen to due process of law, this Court has said, "must rest upon a basis more substantial than favor or discretion." **Roller v. Holly, 176 U. S. 398.**

II. **This Case Presents Fundamental Constitutional Questions Which Have Not Been But Should Be Settled by This Court or Which Were Decided by the Court Below in a Way in Conflict With the Applicable Decisions of This Court.**

a. **The abdication of the judicial power—denial of the constitutional right of the individual to law guaranteed by the Fifth Amendment.**

Petitioner will not use this petition as a vehicle for the display of learning, or the lack of it, on the subject of "political questions." Mr. Justice Frankfurter, who knows as much, if not more, about the doctrine than anyone else, in his paper at the Harvard Conference on Government Under Law celebrating the two-hundredth anniversary of John Marshall's birth, said he would not undertake to find "the common denominator of these judicial abstentions."[1] Petitioner feels that he may appropriately suggest that the fact that the term "political questions" is nearly always written with quotation marks should put this Court on guard lest it be used as a mere slogan to evade judicial responsibility—the case presented by this record.

Certainly the broad statements in the memorandum of the district court that the executive and legislative branches have discretionary powers over foreign and military policies that are not examinable by the courts even

[1] Government Under Law edited by Arthur E. Sutherland, Harvard University Press, Cambridge: 1956, pages 18-19.

"after the event" will be shocking to all Americans for whom Marshall, in the hundred and fifty years since he became Chief Justice, "has come to symbolize . . . the doctrine that a written Constitution, interpreted by a Supreme Court, is the supreme law of the land, superseding all governmental action which purports to conflict with it."[2]

Terming the questions raised by petitioner concerning the conflict with the Constitution, the treaties and the laws from governmental action in the formulation and execution of foreign and military policies culminating in the Korean War "political", the courts below avoided decision on the merits. The holding that petitioner's claims could not be legally proven—as has been shown—was too utterly untenable to stand alone as the rule of decision in the case. Consequently, the courts had "to go the whole hog" by fortifying this holding with a doctrine, the effect of which establishes "foreign and military policy"—consisting of the planning, preparing, initiating and waging war and filching money out of the Treasury therefore by any means, "by hook or crook"—above the Constitution and the laws of the land.[3] This holding was vital to the decision made.

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[2] Ibid. Foreword by Erwin N. Griswold, Dean of Harvard Law School, page v.

[3] That such a doctrine is subversive of democratic or free government was argued by Charles A. Beard in *President Roosevelt and the Coming War*, Yale University Press, New Haven: 1948 in these paragraphs at pages 590-591:

> "Since the drafting of the Constitution, American statesmen of the first order have accepted the axiom that militarism and the exercise of arbitrary power over foreign affairs by the Executive are inveterate foes of republican institutions. It was in part to meet the threatened establishment of a military dictatorship on the ruins of representative government that George Washington took leadership in the formation and ratification of the Constitution. In No. 8 of the Federalist, Alexander Hamilton pointed out that any necessity which enhances the importance of the soldier 'proportionably degrades

The decision must stand or fall according to whether it is the law that the judicial power does not extend to the review of any exertions of power by the executive and legislative departments in the field of military and foreign policies.

Petitioner does not contend that the courts can place limitations on the authority of the executive and legislative departments, in the field of foreign relations or any other area of responsibility. He does contend that where limitations have been set up by the Constitution or by treaties constituting the law of the land and by international law under the authority of which both departments must exercise their powers, or by statutes by which Congress has prescribed rules applicable to and controlling the executive, and a case or controversy arises where the claim is made that official excesses have impinged upon individual rights protected by the Constitution, then it becomes the responsibility of the courts—at least "after the event"—to decide the claims according to the law and the facts as they are made to appear.

It has never been the law in this country that the executive and legislative departments are the exclusive and final judges of their own authority and the limitations thereon where individual rights are directly affected[4]

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the condition of the citizen. The military state becomes elevated above the civil.'

"But it is contended by some contemporary publicists, whose assurance is often more impressive than their knowledge of human government, that offense is the best defense, that unlimited striking power in the Executive is necessary to survival in an age of 'power politics' and 'atom bombs.' Few of them, it is true, venture to say openly that the Constitution is obsolete and that such centralization of authority should be, in fact, substituted for the system of limited government fortified by checks and balances. Yet the implication of their arguments is inexorable; constitutional and democratic government in the United States is at the end of its career."

[4] As the Chief Justice noted, *Trop v. Dulles* marked the 82d time that justices, sworn to discharge and perform all duties incumbent

In the case at bar, petitioner has shown in detail acts of the executive and legislative branches implementing military and foreign policy based on force and threats of war culminating in the plunging of the nation "into war with Korea without the consent of our citizens through their authorized representatives in Congress" (Republican Party 1952 Platform) and how these acts conflict with certain limitations upon the war and foreign relations powers of the two political departments. He has shown that these limitations arise from:

a) The constitutional grants of the powers to Congress exclusively to determine upon war and the levy of taxes and appropriation of money for the conduct of a war for the "common defense"[5] and which, therefore, necessarily imply a prohibition of the contrary, i. e., war for **aggression.** (Since the Tenth Amendment makes it clear beyond the possibility of doubt that powers not delegated to the United States or prohibited to the States are reserved to the people, another amendment to the Constitution would be required in order to confer the power of making war for aggression or taxing and paying out money from the Treas-

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on them "agreeably to the Constitution and laws of the United States," have determined that congressional action exceeded the bounds of the Constitution. Prof. Glendon A. Schubert, Jr., in a valuable study, *The Presidency in the Courts* (University of Minnesota Press, Minneapolis: 1957), has made a compilation of 38 cases holding presidential decisions unconstitutional. By express permission of the publisher and the author, the Appendix to that book listing these cases is reproduced and appended to this petition. *Duncan v. Kahanamoku*, 327 U. S. 304, overlooked by Prof. Schubert, brings the number to 39.

[5] It is submitted that "common" defense as used in the Constitution means the 48 states, the territories and possessions of the United States and does not by any stretch of the term include every 2 x 4 operator of a police state in half of Korea or Viet-Nam, or the island of Formosa who manages to subsist by tapping the American pipeline of arms and the billions appropriated for "mutual" military assistance to prevent "external and internal aggression" in the "general area of China," the Near East, the Far East and the Pacific.

ury therefor; cf. Mr. Justice Robert's opinion for the Court in **United States v. Butler, 297 U. S. 1,** 163, declaring that "powers not granted are prohibited");

b) The Treaty for the Renunciation of War forbidding the adoption of war as an instrument of foreign policy and the United Nations Charter containing an express covenant not to use in international relations either force or threats of force but instead for the settlement of international controversies only the peaceful and pacific procedures which the charter provides to ensure that another resort to the forceful methods adopted by the Axis Powers for the attainment of the aim of their foreign policy, viz., "the security and preservation of the nation and its propagation"[6] would not plunge the world into another and final cataclysm of destruction and death;

c) The assurance given by the United States as one of the leading nations signing the Atlantic Charter that it would not after the war employ land, sea or air armaments outside its frontiers to threaten aggression. (See Appendix herein, page 52);

d) The international common law developed through the London Agreement of August 5, 1945 (Appendix herein, page 54), the Nuremberg Judgment reported under the caption **United States of America v. Hermann Wilhelm Goering et al., 6 F. R. D. 69,** the other war crimes trials following World War II and the affirmation of the Nuremberg principles by the United Nations General Assembly forbidding as international crimes not only the initiating and waging of war for aggression or in violation of international treaties, agreements or assurances but also prescribing that everyone who takes part in any way in the

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[6] Hitler's 1937 statement outlining Germany's foreign policy quoted in *Nazi Conspiracy and Aggression* (U. S. Govt. Printing Office), Vol. I, page 377.

planning or preparation of these offenses is guilty of the gravest crimes against humanity; and

e) The Hague Convention of 1907 Respecting the Laws and Customs of War on Land and the international law developed as the result of the international agreements, assurances and acts set forth at pages 42-46 of petitioner's printed answer in the Government's suit which by their natural and inevitable effect make it a crime against peace, a war crime and a crime against humanity as defined by the Nuremberg Charter to plan and prepare war by atomic and nuclear weapons and biological and bacteriological warfare which can only result in extermination of civilian population.

The above were the questions which petitioner raised. They were not political in any sense of the word. They are **legal** questions. They require interpretation of the Constitution, the treaties and agreements mentioned. Would anyone say that under our system it is within the exclusive province of the Congress to make the decision called for by petitioner's assertion of his individual rights? Congress is not the House of Lords. No part of the judicial power is conferred upon the legislature by our system.

Is it possible that petitioner was mistaken in going to the courts for his remedy and that he should have tried to get a national referendum to decide what the law is by majority vote? Surely not.

Can it be maintained that decision of the questions is exclusively within the executive power? Let us see.

The executive function was exercised when the President recommended the treaties to the Senate for its advice and consent. It was exercised when the representative appointed by the President made the executive agreement creating the International Military Tribunal and defining its jurisdiction and prosecuted the charges against the ac-

cused before the Tribunal. It was exercised again when the President appointed another representative to sit as one of the judges of the Tribunal. These were acts within the exclusive province of the executive and treaty power under the Constitution. And the statutes passed by the Congress, the United Nations Participation Act of 1945 and the amendatory acts, were within the exclusive province of the legislative branch.

In such manner the law was made. Under the Constitution treaties are **law.** Treaties may operate directly as a source of rights and duties on the part of individuals. Unquestionably the treaties mentioned did not require legislation to make them effective for that purpose. The Nuremberg Charter and Judgment settled this point. In **Kennett et al. v. Chambers, 14 How. 38, 46,** construing certain treaties of amity and friendship between the United States of America and the United Mexican States, this Court declared:

> "These Treaties, while they remained in force, were, by the Constitution of the United States, the supreme law, and binding not only upon the government, but upon every citizen."

Certain propositions are so well and generally understood as to need no citation of authority:

The province of the courts is to decide on the rights of individuals.

The mere fact that a treaty is involved in a particular case does not necessarily mean that the court has no jurisdiction.

Congress has no constitutional power to settle rights under treaties except in cases purely political.

It is the duty of the courts only to judge. It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply it in par-

ticular cases, must of necessity expound and interpret that rule.

Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it becomes a case.

Cases arising under the Constitution are cases which require an interpretation of the Constitution for their correct decision. They arise when a litigant claims an actual or threatened invasion of his constitutional rights by the enforcement of some act of public authority and asks for judicial relief.

The question of jurisdiction of cases involving federal questions is determined by the allegations made by the plaintiff. There must be a right or immunity created by the Constitution, laws, or treaties of the United States which must be such that it will be supported if the Constitution, laws, or treaties are given one construction, or defeated if given another.

Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law and can will nothing. All that the court does, can do, is to announce its considered judgment on the question. The only power it has, if such it may be called, is the power of judgment. The court neither approves nor condemns any legislative or executive policy. Its office is to ascertain and declare whether the particular exertion of legislative or executive power complained of is in accordance with, or in contravention of, the Constitution, the treaties and the laws; and having done this, its duty ends.

It is the privilege of a litigant to raise the questions on which he deems his rights depend. The judgment must respond to the issues presented. No matter what the judge's personal preferences or predilections may be con-

cerning those issues, his duty is to decide what the law is and whether it applies to the facts on which the litigant has based his claims.

By every test, the questions raised by petitioner in this litigation were of judicial cognizance. The determination of these issues were of the very essence of the judicial function.

The judgments of the courts below are not responsive to the issues presented. It is no answer to questions (a) to (e), above set forth, merely to say, as the District Court and Court of Appeals did, that

> ". . . under the Constitution of the United States, Congress is vested with the exclusive right to levy taxes and to appropriate public revenue for the common defense and general welfare of the country, and to provide for, and maintain the Army and Navy; and that it has the exclusive authority to determine the requirements of national defense and the amount of tax revenue to be used for defense and military purposes."

There is **defense** and there is **aggression.** They are mutually exclusive. The distinction is as old as the United States of America. (See Oxford Universal Dictionary [Third Edition, 1955] tracing the origin of the term "war for aggression" to the year 1799.) A body of international law has been developed which is founded on that distinction. "War as an instrument of national policy" or "War for aggression" are juridical concepts provable in court like negligence, fraud, piracy, navigability, commerce and "restraint of trade" and many other concepts not precisely defined.

The principal question raised by petitioner was whether the Korean War on the part of the United States was a war of aggression or a war in violation of the treaties, international agreements and other assurances mentioned.

He alleged **facts** showing why it was a war of aggression and exactly how the treaties, agreements and assurances were violated. Neither the Government, nor the courts, have shown that any essential element or elements essential to establish that the war was of the character claimed was lacking. The courts could not, and did not, hold that the Constitution authorizes war for aggression or that the treaties, agreements and assurances mentioned did not have binding effect.

To declare merely that the Constitution confers upon Congress the exclusive right to levy taxes and to appropriate money for the common defense and general welfare of the country, to provide for and maintain an army and navy, and the exclusive authority to determine the requirements of national defense and the amount of revenue for defense and military purposes does not respond to **that** question.

Petitioner's questions concern not merely the **amount** of the revenue spent for military purposes. He questions the **legitimacy** and **constitutionality** of **purpose** of the war spending, the vast sums that have been withdrawn from the Treasury not in consequence of **appropriations** made by **law** contrary to the provisions of Art. I, Sec. 8, cl. 12, and Sec. 9, cl. 7, the use of the public revenue for the support of armies in foreign countries, the Korean Army and U. N. forces in Korea out of appropriations made for other purposes. (Printed answer in U. S. v. Farmer, p. 87; Interrogatories filed in that suit, Appendix 147a; and the facts of law violations admitted by the Government through its failure to answer or deny the Requests for Admission filed by petitioner, Appendix 163a.) He puts in question the spending of billions of dollars out of the Treasury for the waging of the Korean War by the United States, Korean and U. N. armies in plain violation of the express restrictions of Title 22, U. S. C. A., Sec. 287d-1 (Appendix herein, page 65).

Where and how have the courts below responded to these questions except to say that they come under the head of "foreign policy" which is the exclusive province of the executive and legislative branches?

Petitioner concedes that the executive and legislative departments do have certain discretionary powers in the field of foreign relations that are not judicially cognizable. There has met this year in Geneva a United Nations Conference on the Law of the Sea seeking to establish by treaty uniform territorial sea limits. The United States representative as a compromise effort to secure agreement dropped its insistence on a three-mile limit to join the traditional maritime powers in proposing a six-mile limit. No doubt this was within the discretion of the executive, but if a treaty should be made and on the recommendations of the President ratified by the Senate, would it be within the discretionary powers of the executive after it goes into effect to continue handling our foreign relations on the basis of a three-mile limit? Would not the new treaty limit the discretion of the President in his control of foreign relations?

In 1928 the French Government submitted to the United States Secretary of State Kellogg a form of treaty entitled "Draft of Pact of Perpetual Friendship between France and the United States." Through subsequent diplomatic negotiations Mr. Kellogg proposed instead of a bilateral treaty between France and the United States a multilateral treaty "binding the parties thereto not to resort to war with one another." Such a treaty was made and ratified by the United States Senate. There were 15 signatory powers and the definite adherence of 47 nonsignatory governments. (See Treaty for the Renunciation of War, Dept. of State Publication No. 468.)

It was within the discretion of the United States Secretary of State acting by the authority of the President to negotiate the Treaty for the Renunciation of War. After

it went into effect providing that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin that might arise between the parties would never be sought except by pacific means, was it discretionary with the executive and legislative branches to create the military posture described in Sec. XVIII of petitioner's printed answer pages 103 to 110 on the theory that threats of war will prevent war? Were the acts of the Government promoting the revival of unbridled militarism and a desperate arms race, dividing the United Nations into two armed camps, turning the organization (the U. N.) set up to **prevent** war into an organization to **make** war against the territorial integrity and independence of Korea, the rearming and remilitarization of Germany and Japan (described in Sec. XV, pages 60 to 68 of petitioner's printed answer) in violation of the United Nations agreements and assurances that these nations would not be allowed to rearm and the increasing threats to unleash atomic and nuclear bombs and weapons, by design or accident, on the Soviet Union means calculated for the observance and fulfillment the unequivocal and forever binding proscription of war as a means for the settlement of contained in the Treaty for the Renunciation of War and the United Nations Charter?

The settlement of boundaries, the recognition or nonrecognition of foreign governments, the appointment and reception of ministers, the promotion of commercial and cultural intercourse between the United States and other nations, the development of international law—these and many other matters and dealings—are properly—and indeed of necessity—within the discretionary authority of the executive department. In the matters mentioned nothing in the Constitution operates as a limitation on the executive power and the treaty power. The wisdom or propriety of what is done in such matters may not be made the subject of judicial inquiry or decision. It does not follow, however, that **every** act done by the executive

department, or acts of the executive and the legislative, is immune from judicial review. Forasmuch, under our system of constitutional government there is no room for arbitrary power and in the conduct of foreign relations, the political departments cannot exceed their constitutional grant of authority or act contrary to the principles of international law. **Wilson v. Girard, supra; United States v. Curtis Wright Export Corporation, 299 U. S. 304; MacLeod v. United States, 229 U. S. 416; Burnet v. Brooks, 288 U. S. 378; Schooner v. M'Faddon, 7 Cranch. 116.**

Charles Warren in his great work "The Supreme Court in United States History" pays tribute to the judiciary for the part it has played in preserving scrupulous respect for treaty obligations. Throughout the years there has remained with petitioner a vivid recollection that public indignation aroused by German militarism's disrespect of treaty obligations was one of the prime causes of America's entrance into World War I. The German Chancellor, von Bethmann Hollweg, could declare the treaty with Belgium to be "a mere scrap of paper." The American President, Wilson, inspired the nation with such sentiments and moral pronouncements as the following:

> "And so I say that it is patriotic sometimes to prefer the honor of the country to its material interest. Would you rather be deemed by all the nations of the world incapable of keeping your treaty obligations in order that you might have free tolls for American ships? The treaty under which we gave up that right may have been a mistaken treaty, but there was no mistake about its meaning.
>
> "When I have made a promise as a man I try to keep it, and I know of no other rule permissible to a nation. The most distinguished nation in the world is the nation that can and will keep its promises even to its own hurt. And I want to say parenthetically that I do not think anybody was hurt. . . .

> "The most patriotic man, ladies and gentlemen, is sometimes the man who goes in the direction that he thinks right even when he sees half the world against him. . . ."[7]

Have we as a nation forfeited our heritage? While the American Secretary of State will not **say** that our treaties renouncing war and force and threats of force in international relations are mere scraps of paper, he **treats** them that way.

It is not a function of the judicial power to compel the executive by mandamus or injunction to observe the laws. But what it can do is to protect the rights of individuals whenever an appropriate case is presented from the injury that will result from non-observance of the law. This rule was laid down in **State of Mississippi v. Johnson, 4 Wall. 475,** in these words:

> "The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance."

This is such a case. Petitioner is defending against arbitrary power. His right to make the defense is grounded on the guarantees of personal liberty in both the Tennessee and the federal constitutions, as well as on the basic principle of the criminal law recognized in every jurisprudence that if a certain act is forbidden, everybody else must refrain from aiding the criminal.[8]

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[7] Address on "The Meaning of the Declaration of Independence" delivered at Independence Hall, July 4, 1914, printed in *Democracy Today*, The Lake English Classics, Scott, Foresman & Co., Chicago and New York: 1917, page 63.

[8] Cf. Clark and Marshall on the Law of Crimes (4th edition by Kearney) Callahan & Co., 1940, Sec. 67, page 100; also Title 18 U. S. C. 4, punishing the offense of misprision of felony.

In a public statement announcing his refusal to pay the tax, petitioner stated:

> "I am a law-abiding citizen. My government has no right or power to force me to become a war criminal. The Nuremberg Law says that those guilty of complicity in war activities within the prohibition of that law render themselves guilty of the crime along with the heads of states and high policy makers. In refusing to pay taxes to support the war activities of the Government of the United States, I am not in disobedience to the law. I am obeying the law."

Petitioner's right and duty to refuse to pay taxes for the criminal ends and purposes of the government is not merely that which all citizens have in common to have the government administered according to law, without waste of the public money as in **Fairchild v. Hughes, 258 U. S. 126.** Nor is it based on the unlawful diversion which will deplete the public funds and thus increase the burden of future taxation as in **Frothingham v. Mellon, 262 U. S. 447.** It is the right to resist the taking of his property for unconstitutional ends as in **United States v. Butler, 297 U. S. 1.** It is the right not to be degraded by the Government into compulsory cooperation with crime—a right certainly not inferior in the eyes of the law to the right against defamation by government. **Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123.** It is the right without which American citizenship will suffer a great fall.

The fact that Congress' power over appropriations is involved renders the questions raised no more "political" than the question whether the legislative discretion covered a violation of the prohibition against bills of attainder. **Lovett v. United States, 328 U. S. 303.** Is freedom of conscience inferior in the eyes of the law to freedom from attainder or from cruel and inhuman punishment?

CONCLUSION.

Seldom is a case brought before this Court as fateful for the destiny of the nation and the peace of the world as this. It would seem that the Constitution is broad enough and secure enough to allow one solitary individual to win emancipation from aggressive militarism and war slavery. Diplomacy has failed to end a desperate arms race that has continued for a dozen years, one whose tempo has increased year by year, month by month, week by week and day by day. Decision for petitioner in this case might be the key that will unlock the portals barring entrance to a world joyously embracing order and tranquility under law.

The answer given by this Court to this petition for redress of grievances doubtless will depend on the choice between two rival theories of government. Both profess devotion to the principles of the Constitution and the rule of law, but the one emphasizes human rights and the other exalts government powers. The coming struggle was perhaps foreseen by none so early and so clearly as by two eminent Americans, Dr. Harry Emerson Fosdick and Prof. Edward S. Corwin.

Dr. Fosdick, pastor of the Riverside Church in New York on Thanksgiving Day, November 21, 1943, preached a sermon on the subject "Worshipping the Gods of a Beaten Enemy." The theme of the sermon was that all history teaches one lesson about war, viz., its inevitable tendency to lead the victor to take on the character of the vanquished. The paradox which darkened history's ages he said was "that in fighting our enemies we copy them, and in our victories over them assume ourselves the very attributes and qualities we have fought against." As mute evidence of the soundness of the observation may be cited the fact that today there are many more who seem to be

willing to fight a war to death for the ideals that have made the American nation great than simply to live by them.

Prof. Corwin delivered at the University of Michigan in 1945, a series of lectures which were published in book form under the title "Total War and the Constitution" (Knopf, New York, 1947). The title putting the Constitution **behind** Total War bespeaks the baleful import of the author's arguments. The publisher's fly-leaf states:

> "In this book Edward S. Corwin demonstrates with force and authority that the powers delegated to or assumed by the President during the war have virtually ended whatever balance of powers (as set forth in the Constitution) still remained among the three major branches of our government. Professor Corwin sees this tendency toward centralization—and finding constitutional sanction for it—as one that began early in our national life and made its greatest strides when powers willingly ceded to the executive during each emergency could not be or were not withdrawn later."

No friend of judicial review, Prof. Corwin in the foreword which he wrote as editor of the 1952 Constitution of the United States of America, Revised and Annotated (Sen. Doc. 170, 82d Congress, 2d Session), expresses the view that "In the field of foreign relations . . . the doctrine of enumerated powers has always had a difficult row to hoe, and today may be unqualifiedly asserted to be defunct" (page xv). At page 180 of the book Total War and the Constitution the author boldly states that "the Websterian conception of a 'Constitution of Rights,' featured especially by an elaboration of checks and balances" is not "only on the way out—it **is** out." Nevertheless, the learned professor concedes that "unquestionably there were values underlying this conception which we should not

wish to see squeezed out of the Constitution altogether, one of them—the most important and most ancient one—being the idea of **liberty against government.**"

In this case for the first time there is judicial dependence on what petitioner feels may fittingly be termed the Corwinian conception of a Constitution of Prerogative Powers. In the oral argument before Judge McGarraghy in the Girard case, the Government took the position that the decision not to exercise the right to try Girard was "a determination by the executive branch in the conduct of foreign and military affairs and poses no question for judicial review."[9] In his ruling Judge McGarraghy took no note of the point and the Government's brief in this Court toned the argument down to the statement in the body of the section dealing with international law that "Where the Executive has thus taken a definite and formal position on a matter of international law, the courts should follow it if it is reasonably possible for them to do so." The Court's opinion in the Girard case cited one of Marshall's opinions to show that the treaty and agreements involved were consistent with international law.

The case which this petition presents stands on an entirely different footing. Being unable to find that the acts of the executive complained of by petitioner did not violate the treaties and international law, the courts below announced what is in effect the doctrine of prerogative powers in the conduct of foreign and military affairs. As applied in the case at bar it amounts to absolutism, i. e., that the doctrines of enumerated powers, checks and balances and the independent judiciary, as Prof. Corwin says, are "out" in the field of military and foreign affairs. Turning to another of Prof. Corwin's books where his ideas are forcefully expounded we find that he adopts Locke's definition of "prerogative" as "this power to act

[9] The New York Times, June 19, 1957, page 6, col. 3.

according to discretion for the public good, without prescription of the law and sometimes even against it." (The Presidency Today, by Corwin and Koenig, New York University Press, New York: 1956, page 14.) In Chap. II dealing with the subject "Of Presidential Prerogative" it is explained that the term means "power claimed by the President primarily on the basis of the Constitution itself."

It is interesting to note that in The Presidency Today, the authors criticize this Court's decision in the steel seizure case. It will be recalled that the President's justification for the seizure was "the requirements of national security." The learned authors say that the court's opinion in that case "bears all the earmarks of hasty improvisation as well as strong prepossession" (page 41). Elsewhere they say that the President "underwent a technical defeat" adding that "Even so, the full implication of the case is by no means unfavorable to presidential pretensions in time of stress" (page 93).

Significantly enough there is not one word in the "Presidency Today" about President Truman's usurpation of the power of Congress to declare war when he sent Gen. MacArthur into Korea.

Petitioner has dwelt on the ideas of Prof. Corwin to show that a refusal by the Court to grant certiorari in this case may have disastrous consequences. Prof. Corwin **may** be right. The rebuff which presidential pretensions received in the steel seizure case may after all be only a **technical** defeat. This case may be the last and best chance to save the government of the people, by the people and for the people from being subverted into a military dictatorship. There are signs on the horizon indicating its coming, already bigger than a man's hand. Secretary Dulles' threats that the President, without consulting Congress, can strike back "instantly" and "massively" against any "aggression" anywhere in 42 or more coun-

tries linked with the United States by military pacts in Europe, the Middle East, the Far East and the Americas resound around the world. And it has come to light that planes loaded with hydrogen bombs are taking off at the flash on the radar screen in distant parts of the world tuned for orders to drop their lethal load on Russian targets.

Nothing but a decision of this Court upholding individual immunity from participation in and support of such madness can prevent the treaties made by this nation and international law, built up hardly a generation ago at so great a sacrifice, from being trampled under foot.

From a heart weary and aching from twelve whole years of watching the arms race go on with mounting fury—a folly which nearly all those in positions of leadership, whether in office or outside of it, recognize and, indeed, admit but few will raise even a little finger to stop—petitioner pleads with the Court to let this case come on for hearing and argument. Remove not the ancient landmark of Liberty Against Government!

Not for himself only does petitioner make the plea, but for our children, and the children of our friends, and for all the young lives that are marching up from the gates of birth, pure and eager, with the morning sunshine on their faces. He pleads for help that these may be spared from the poisoning of the air they must breathe, the water they must drink, and the earth which must produce their food with our planning and preparing and testing more frightful and efficient ways to kill innocent people en masse.

Hear the prayer of Walter Rauschenbusch:

> "O Lord, since the first blood of Abel cried to thee from the ground that drank it, this earth of Thine has been defiled with the blood of man shed by his

brother's hand, and the centuries throb with the ceaseless horror of war. Ever the pride of kings and the covetousness of the strong have driven peaceful nations to slaughter. Ever the songs of the past and the pomp of armies have been used to inflame the passions of the people. Our spirit cries out to Thee in revolt against it, and we know that our righteous anger is answered by Thy holy wrath.

"Break Thou the spell of the enchantments that make the nations drunk with the lust of battle and draw them on as willing tools of death. Grant us a quiet and steadfast mind when our own nation clamors for vengeance or aggression. Strengthen our sense of justice and our regard for the equal worth of peoples and races. Grant to the rulers of nations faith in the possibility of peace through justice, and grant to the common people a new and stern enthusiasm for the cause of peace. . . .

"O Thou strong Father of all nations, draw all Thy great family together with an increasing sense of our common blood and destiny, that peace may come on earth at last, and Thy sun may shed its light rejoicing on a holy brotherhood of peoples."

Most humbly and prayerfully submitted,

FYKE FARMER Pro Se,
300 West Bellevue Drive,
Nashville 5, Tennessee.

APPENDIX A.

Nos. 13,198, 13,199.

UNITED STATES COURT OF APPEALS
For the Sixth Circuit.

No. 13,198.

FYKE FARMER,
Appellant,

vs.

J. M. ROUNTREE, Director of Internal Revenue et al.,
Appellees.

No. 13,199.

FYKE FARMER,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

Appeals from the Judgments of the United States District Court for the Middle District of Tennessee.

Decided February 12, 1958.

Before McAllister, Miller, and Stewart, Circuit Judges.

Per Curiam. These are appeals from judgments of the district court, dismissing appellant's complaints and granting appellees' motions for judgments on the pleadings. Appellant filed his complaints for judgments declaring his immunity in substantial part, from income tax liability for the year 1949; to recover assessed income taxes for that year; and for a refund of such taxes. He based his claim

on the ground that the military and foreign policies of the United States, since World War II, including the prosecution of the Korean War, were designed and carried out in violation of international law, and were, therefore illegal and void; and that he had the right to refuse payment of two-thirds of his income tax for the reason that the said revenue had been illegally appropriated by Congress for such illegal purposes, and that only one-third of such revenue had been appropriated for the legal and Constitutional functions of the government. The district court held that this claim involved the resolution of political questions, and that the courts had no right to resolve such questions; that, under the Constitution of the United States, Congress is vested with the exclusive right to levy taxes and to appropriate public revenue for the common defense and general welfare of the country, and to provide for, and maintain the Army and Navy; *and that it has the* exclusive authority to determine the requirements of national defense and the amount of tax revenue to be used for defense or military purposes. The court further held that the foreign policy of the United States is the exclusive province of the executive and legislative branches of the government; and that the court lacked jurisdiction to adjudicate the claims set forth by appellant. With respect to a contention that the prior order of a district judge, overruling the motions to dismiss, constituted the law in the case, the district court held that such order was, in effect, a reservation of a ruling upon the question of jurisdiction.

The copious briefs of appellant disclose an extensive knowledge of the foreign relations and policies of the United States government. The claims set forth in the complaint, however, involved political and governmental questions which are confided by the Constitution to the legislative and executive branches of the government, and over which the courts have no jurisdiction.

We agree with the government's contention, also, that the prior order overruling motions to dismiss, did not constitute the law of the case.

All of these contentions were fully considered and determined in the opinion of Judge William E. Miller, reported in 149 F. Supp. 327, with which we concur; and the judgment of the district court is, accordingly, affirmed for the reasons set forth in that opinion.

Nos. 13,198, 13,199.

UNITED STATES COURT OF APPEALS
For the Sixth Circuit.

No. 13,198.

FYKE FARMER,
Appellant,

v.

J. M. ROUNTREE, Director of Internal Revenue et al.,
Appellees.

No. 13,199.

FYKE FARMER,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

Filed Mar 13 1958
Carl W. Reuss, Clerk.
Order Amending Opinion and Denying Rehearing.

Before: McAllister, Miller and Stewart, Circuit Judges

Per Curiam. It appears in the opinion filed in the District Court that the District Judge disposed of appellant's

petition for a declaratory judgment and injunction, as well as the petition of another for a refund of taxes. The disposition of the cases was made by the Court on motion for judgments on the pleadings in both cases, as the petitions were based upon the same grounds. In this Court, we had before us only the appeals of appellant Farmer and he sought a declaratory judgment and injunction, but not a refund.

It Is Accordingly Ordered that the first two sentences of the Opinion heretofore filed be amended to read as follows:

> "These are appeals from judgments of the District Court dismissing appellant's complaint and granting appellee's motion for judgment on the pleadings. Appellant filed his complaint for judgment declaring his immunity, in substantial part, from income tax liability for the year 1949, and to enjoin collection of the income taxes assessed against him for that year."

It Is Further Ordered that the petition for rehearing be denied.

Approved for entry:

.....

United States Circuit Judge.

APPENDIX B.

Constitutional Provisions, Treaties and Statutes Involved.

The Preamble of the Constitution of the United States of America is as follows:

> WE THE PEOPLE of the United States in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I provides in pertinent part:

> Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; . . .
>
> To declare War, grant letters of Marque and Reprisal, and make Rules concerning Capture on Land and Water;
>
> To Raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than Two years;
>
> To provide and maintain a Navy;
>
> To Make Rules for the Government and Regulation of the land and naval Forces;
>
> To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.
>
> Section 9. No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all Public Money shall be published from time to time.

Article II provides in pertinent part:

> Section 1. The executive powers shall be vested in the President of the United States of America.
>
> Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, . . . He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur;
>
> Section 3. . . . he shall take care that the Laws be faithfully executed, . . .

Article III provides in pertinent part:

> Section 1. The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time establish . . .
>
> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made under their authority; . . . to Controversies to which the United States shall be a party; . . .

Article VI provides in pertinent part:

> This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the authority of the United States, shall be the supreme Law of the Land; . . .

Amendment I provides in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

Amendment V provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property without due process of law; . . .

Amendment IX provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Declaration of Rights of the Constitution of the State of Tennessee provides in pertinent part:

> . . . no human authority can, in any case whatever, control or interfere with the rights of conscience.

Article XI, Section 16, of the Tennessee Constitution provides:

> The declaration of rights, hereto affixed, is declared to be part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the general powers of the government, and shall forever remain inviolate.

International Treaties, Agreements and Assurances.

A. **Treaty for the renunciation of war** (46 Stat. 2343).

The treaty between the United States of America and sixty-one other powers (generally known as the Kellogg-Briand Pact) proclaimed by President Herbert Hoover, July 24, 1929, and published in 46 Stat. 2343 provides that

the President of the United States, and the other signatory heads of States

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that peaceful and friendly relations existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficient provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

. . . have agreed upon the following articles:

Article I.

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy with one another.

Article II.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

President Hoover's proclamation of said treaty stated:

> Now Therefore, be it known that I, Herbert Hoover, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

B. **The United Nations' declaration and the Atlantic Charter** (55 Stat. 1600):

On January 1, 1952, the representatives of twenty-six nations that were fighting the war against the Axis Powers, Germany, Italy and Japan, signed in Washington, D. C., a Declaration of the United Nations. The text of the Declaration was, in part, as follows:

> The Governments signatory hereto,
>
> Having subscribed to a common program of purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, dated August 14, 1941, known as the Atlantic Charter. . . .

The United Nations' Declaration and the Atlantic Charter were published in 55 Stat. 1600. The Atlantic Charter, among other things, stated:

> The President of the United States of America and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; . . .

. . .

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all men in all lands may live out their lives in freedom from fear and want;

. . .

Eighth, they believe that all nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.

Franklin D. Roosevelt,
Winston Churchill.

Dated August 14, 1941.

In addition to the original twenty-six signatories to the United Nations Declaration, twenty-one other nations during World War II adhered to the Declaration.

C. **Charter of the United Nations** (59 Stat. 1031).

On June 26, 1945, the Charter of the United Nations was signed at San Francisco and after ratification by the United States Senate was proclaimed by President Truman to be effective October 24, 1945. In pursuance to law, the Charter and the President's Proclamation were published in 59 Stat. 1031. That Proclamation states that it was proclaimed:

> . . . to the end that the same and every article and clause thereof may be observed and fulfilled with good faith on and from the twenty-fourth day of October, one thousand nine hundred forty-five, by the United States of America and all other persons subject to the jurisdiction thereof.

By Article 2, Section 4, of the United Nations Charter it is provided:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.

One of the Purposes stated in the Charter of the United Nations is in Article I as follows:

> 1. To . . . bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situation which might lead to a breach of the peace.

One of the Ends stated in the Preamble of the Charter of the United Nations is

> to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest,

With the end in view, it was provided in Chapter VII of the United Nations Charter that

Article 43.

1. All members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

D. **The agreement signed in London August 8, 1945, providing for the creation of the International Military Tribunal and the charter of the Tribunal** (59 Stat. 1544).

During World War II and immediately following the cessation of hostilities, the United States joined in the creation of an International Military Tribunal for the prosecution and punishment of major war criminals of the European Axis. President Truman, acting under the authority vested in the President and as Commander in Chief of the Army and Navy, by Executive Order 9547 dated May 2, 1945, designated the Honorable Robert H. Jackson, Associate Justice of the Supreme Court, as the Representative of the United States and as Chief Counsel to prepare and prosecute charges of atrocities and war crimes against such of the leaders of the European Axis Powers and their accessories as the United States might bring to trial by agreement with any of the United Nations before an international military tribunal.

Justice Jackson, as the United States Representative, and the representatives of the Provisional Government of the French Republic, the Government of the United Kingdom and Northern Ireland, and the Government of the Union of Soviet Socialist Republics, by an agreem-

signed in London August 8, 1945 provided for the setting up of the International Military Tribunal and set forth the Charter of the Tribunal. This Agreement was published as Executive Agreement, Series 472, in 59 Stat. 1544.

The Charter provided in part as follows:

II. **Jurisdiction and general principles**

Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) War Crimes: namely, violations of the laws and customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other in-

humane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7. The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8. The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Nineteen other members of the United Nations subsequently adhered to the Charter. These Governments were: Greece, Denmark, Yugoslavia, The Netherlands, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxembourg, Haiti, New Zealand, India, Venezuela, Uruguay and Paraguay. (The Charter and Judgment of the Nuremberg Tribunal—History and Analysis, memorandum submitted by the Secretary-General, U. N. Doc. A/CN.4.5, 3 March 1949.)

By Executive Order No. 9626 dated September 24, 1945 President Truman appointed the member and an alternate member of the United States of the International Military Tribunal.

E. Control Council Law No. 10

On December 20, 1945, the four occupying powers of Germany, acting through the four Zone Commanders, promulgated Control Council Law No. 10 in order

> . . . to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal . . . (Official Gazette of the Control Council for Germany, Number 3, 31 January 1946, Berlin: Allied Secretariat, pp. 50-55).

Law No. 10 was adapted from the London Charter with certain differences, one of which was that the definition of "crimes against peace," in other respects the same as the Nuremberg Charter, included "invasions" as well as "wars" (thus furnishing a basis for charging the Austrian and Czechoslovakian conquests as crimes against peace).

Article II, Sec. 2 of Law No. 10, provided for individual responsibility for the crimes defined in Section 1 as follows:

> 2. Any person, without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he
>
> a) was a principal or
>
> b) was an accessory to the commission of any such crime or ordered or abetted the same or
>
> c) took a consenting part therein or
>
> d) was connected with plans or enterprises involving its commission or
>
> e) was a member of any organization or group connected with the commission of any such crime or

f) with reference to paragraph 1a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country.

F. Charter of the International Military Tribunal for the Far East, January 19, 1946.

The Charter was approved by the Supreme Commander for the Allied Powers January 19, 1946; it was amended by order of the Supreme Commander, General Headquarters, APO 500, April 26, 1946. (Treaties and Other International Act Series 1589; Dept. of State Publication 2613; A Decade of American Foreign Policy, 1941-1949, Senate Document 123, 81st Cong., 1st Session, p. 961.)

The Charter provides in pertinent part:

II. Jurisdiction and general provisions

Article 5. Jurisdiction Over Persons and Offenses.

The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) **Crimes Against Peace**: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) **Conventional War Crimes**: Namely, violations of the laws or customs of war;

(c) **Crimes Against Humanity**: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, . . . whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

Article 6. Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

G. **Affirmation of the principles of international law recognized by the Charter and Judgment of the Nuremberg Tribunal.**

On motion of the United States the first session of the General Assembly of the United Nations unanimously adopted a resolution affirming the principles of international law recognized by the Charter and Judgment of the Nuremberg Tribunal. [Res. 95 (I), adopted 11 December, 1946; The United States and the United Nations: Report by the President to the Congress for the year 1946, Dept. of State Pub. 2735, pp. 129-130; A Decade of American Foreign Policy, 1941-49, p. 965.]

H. **The Cairo Conference, November 22-26, 1943.**

Following the Cairo Conference on December 1, 1943, President Roosevelt, Prime Minister Churchill and Gen-

eralissimo Chiang Kai-shek issued a statement in relevant part as follows:

> The Three Great Allies are fighting this war to restrain and punish the aggression of Japan. They covet no gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent (Toward Peace—Documents, Dept. of State publication 2298, p. 14; Department of State Bulletin, Dec. 4, 1943; A Decade of American Foreign Policy, 1941-1949, p. 22).

1. The Crimean (Yalta) Conference, February 4-11, 1945.

The Crimea Conference of the Heads of the Governments of the United States of America, the United Kingdom, and the Union of Soviet Socialist Republics which took place from February 4th to 11th, 1945, came to conclusions in relevant part as follows:

> By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the Declaration of the United Nations, and our determination to build in cooperation with other peace-loving nations world order under law, dedicated to peace, security, freedom and general well-being of mankind. . . .

III. **Dismemberment of Germany.**

It was agreed that Article 12 (a) of the Surrender Terms for Germany should be amended to read as follows:

> The United Kingdom, the United States of America and the Union of Soviet Socialist Republics shall possess supreme authority with respect to Germany. In the exercise of such authority they will take such steps, including the complete disarmament, demilitarization and dismemberment of Germany as they deem requisite for future peace and security. (Report of Conference, Dept. of State Bulletin of February 18, 1945, p. 214; A Decade of American Foreign Policy, 1941-1949, p. 27.)

J. **The Berlin (Potsdam) Conference, July 17-August 2, 1945.**

The tripartite conference of the three heads of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, which took place from July 17 to August 2, 1945, came to conclusions announced in relevant part as follows:

> 3. The purposes of the occupation of Germany by which the Control Council shall be guided are:
>
> > (i) The complete disarmament and demilitarization of Germany and the elimination or control of all German industry that could be used for military production.
>
> . . .
>
> B. ECONOMIC PRINCIPLES.
>
> 11. In order to eliminate Germany's war potential, the production of arms, ammunition and implements

of war as well as all types of aircraft and sea-going ships shall be prohibited and prevented . . .

. . .

15. Allied controls shall be imposed upon the German economy, but only to the extent necessary;

(a) To carry out programs of industrial disarmament and demilitarization, . . .

. . .

(d) To control German industry and all economic and financial transactions, including exports and imports, with the aim of preventing Germany from developing a war potential and achieving the other objectives named herein.

. . .

(b) **Proclamation Defining Terms for Japanese Surrender, July 26, 1945:**

(1) We—The President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain, representing the hundreds of millions of our countrymen, have conferred and agree that Japan shall be given an opportunity to end this war.

. . .

(6) There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan to embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

(7) Until such a new order is established **and** until there is convincing proof that Japan's war-making power is destroyed, points in Japanese territory to be designated by the Allies shall be occupied to secure

the achievement of the basic objectives we are here setting forth. (Report on the Tripartite Conference at Berlin, Department of State Bulletin of August 5, 1945, p. 153; A Decade of American Foreign Policy, 1941-1949, p. 34.)

K. **Basic initial post-surrender policy.**

Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan, November 1, 1945.

3. Basic Objectives of Military Occupation of Japan.

(a) The ultimate objective of the United Nations with respect to Japan is to foster conditions which will give the greatest possible assurance that Japan will not again become a menace to the peace and security of the world and will permit her eventual admission as a responsible and peaceful member of the family of nations. Certain measures considered to be essential for the achievement of this objective have been set forth in the Potsdam Declaration. These measures include, among other, the carrying out of the Cairo Declaration and the limiting of Japanese sovereignty to the four main islands and such minor islands as the Allied Powers determine; the abolition of militarism and ultra-nationalism in all their forms; the disarmament and demilitarization of Japan, with continuing control over Japan's capacity to make war; . . . (The United States Department of State Documents and State Papers April, 1948, pp. 32-45; A Decade of American Foreign Policy, 1941-1949, p. 633.)

Statutes.

Tit. 22, U. S. C., Sec. 261, is as follows:

Sec. 261. Policy as to settlement of disputes and disarmament

It is declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength. Aug. 29, 1916, c. 417, 39 Stat. 618.

The United Nations Participation Act of 1945, as amended, carried into Tit. 22, U. S. C. A., beginning with Section 287 provides in pertinent part as follows:

Sec. 287d. Use of Armed Forces; limitations

The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed

forces, facilities and assistance provided for therein: Provided, that except as authorized in section 287d-1 of this title, nothing contained in this section shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, or assistance provided for in such special agreement or agreements. Dec. 20, 1945, c. 583, Sec. 6, 59 Stat. 621; Oct. 10, 1949, c. 660, Sec. 4, 63 Stat. 735.

Sec. 287d-1. Noncombatant assistance to United Nations—Armed forces details; supplies and equipment; obligation of funds; procurement and replacement of requested items

(a) Notwithstanding the provisions of any other law, the President, upon request of the United Nations for cooperative action, and to the extent that he finds that it is consistent with the national interest to comply with such request, may authorize, in support of such activities of the United Nations as are specifically directed to the peaceful settlement of disputes and not involving the employment of armed forces contemplated by chapter VII of the United Nations Charter—

(1) the detail to the United Nations, under such terms and conditions as the President shall determine, of personnel of the armed forces of the United States to serve as observers, guards, or in any noncombatant capacity, but in no event shall more than a total of one thousand of such personnel be so detailed at any one time: **Provided,** That while so detailed, such personnel shall be considered for all purposes as acting in the line of duty, including the receipt of pay and allowances as personnel of the armed forces of the

United States, credit for longevity and retirement, and all other perquisites appertaining to such duty: **Provided further,** That upon authorization or approval by the President, such personnel may accept directly from the United Nations (a) any or all of the allowances or perquisites to which they are entitled under the first proviso hereof, and (b) extraordinary expenses and perquisites incident to such detail;

(2) the furnishing of facilities, services, or other assistance and the loan of the agreed fair share of the United States of any supplies and equipment to the United Nations by the Department of Defense, under such terms and conditions as the President shall determine;

(3) the obligation, insofar as necessary to carry out the purposes of clauses (1) and (2) of this subsection, of any funds appropriated to the Department of Defense or any department therein, the procurement of such personnel, supplies, equipment, facilities, services, or other assistance as may be available in accordance with the request of the United Nations, and the replacement of such items, when necessary, where they are furnished from stocks.

(paragraph (b) relating to reimbursement from United Nations; waiver of reimbursement, paragraph (c) providing additional appropriation authorization, and paragraph (d) relating to disclosure of information are omitted as not pertinent to questions raised by petition for certiorari) Dec. 20, 1945, c. 583, Sec. 7, as added Oct. 10, 1949, c. 660, Sec. 5, 63 Stat. 735; Aug. 10, 1949, c. 412, Sec. 12 (a), 63 Stat. 591.

Statute restricting use of army

"It shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, ex-

cept in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding $10,000 or imprisonment not exceeding two years or by both fine and imprisonment (June 18, 1948, c. 263, Sec. 15, 20 Stat. 152.) Tit. 10, U. S. C. A., Sec. 15.

Expedition against friendly nations prohibited

Whoever, with the United States, knowingly begins or sets on foot or provides for or prepares a means for or furnishes money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than $3,000 or imprisoned not more than three years, or both. June 25, 1948, c. 645, 62 Stat. 745. Sec. 960, Title 8, U. S. C. A.

Tit. 22, U. S. C. A.—Subchapter II.—Neutrality

Sec. 441. Proclamation of state of war between foreign states

(a) Whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war.

(b) Whenever the state of war which shall have caused the President to issue any proclamation under

the authority of this section shall have ceased to exist with respect to any state named in such proclamation, he shall revoke such proclamation with respect to such state. Nov. 4, 1939, 12:04 p. m., c. 2, Sec. 1, 54 Stat. 4

Sec. 421. Contracts by Government agencies for defense articles, services, etc., for foreign governments in interests of United States

The President may, from time to time, when he deems it in the interest of national defense, authorize the head of any department or agency of the Government, to enter into contracts for the procurement of defense articles, information, or services for the government of any country whose defense the President deems vital to the defense of the United States, to the extent such government agrees to pay the United States for such defense articles, information, or services prior to the receipt thereof and to make such payments from time to time as the President may require to protect the interests of the United States; and upon payment of the full cost, the President may dispose of such articles, information, or services to such government: **Provided**, that the total amount of the outstanding contracts under this section, less the amounts which have been paid to the United States under such contracts, shall at no time exceed $600,000,000. Oct. 28, 1941, c. 460, Title I, Sec. 102, 55 Stat. 746.

CASES HOLDING PRESIDENTIAL DECISIONS UNCONSTITUTIONAL *

Title of Case	Presidential Order Declared Invalid	Function of Order	Basis of Decision	Court
1. Little v. Bareme, 2 Cranch 170 (1804)	Written Instructions, March 12, 1799, to Navy Officer	Directing seizure of vessels trading with French ports	Conflict with statute	U.S. S. Ct.
2. Gilchrist v. Collector, 10 Fed. Cas. 355 (1808), No. 5420	Written Instructions, May 6, 1808, Issued as Circular Letter of Treasury	Directing detention of vessels seeking clearance for coastwise commerce	Conflict with statute	U.S. C. Ct., So. Car.
3. *The Orono*, 18 Fed. Cas. 830 (1812), No. 10,585	Proclamation, August 9, 1809	Reviving interdiction of commerce established by lapsed Embargo Acts	Separation of powers theory	U.S. C. Ct., Mass.
4. President's Proclamation Declared Illegal, 19 Fed. Cas. 1289 (1812), No. 11,391	Proclamation, August 9, 1809	Reviving interdiction of commerce established by lapsed Embargo Acts	Separation of powers theory	U.S. C. Ct., No. Car.
5. *The Wasp*, 29 Fed. Cas. 368 (1812), No. 17,249	Proclamation, August 9, 1809	Reviving interdiction of commerce established by lapsed Embargo Acts	Separation of powers theory	U.S. C. Ct., Mass.
6. Gelston v. Hoyt, 3 Wheat. 246 (1818)	Orders, July 6, 1810	Directing civilian officials to seize ship to prevent violation of Neutrality Act	Conflict with statute	U.S. S. Ct.
7. Lorimier v. Lewis, 39 Am.D. 461; 1 Morris (Iowa) 253 (1843)	License	Leasing rights to work lead mines in public lands	Separation of powers theory	Terr. of Iowa, S. Ct.
8. Jecker v. Montgomery, 13 How. 498 (1851)	Written Orders to Senior Naval Officer in California	Authorizing local military prize courts during Mexican War	Art. III, U.S. Constitution	U.S. S. Ct.

* This list does not include lower court decisions holding presidential orders unconstitutional but reversed upon appeal; it includes only cases in which final determinations on the issue of constitutionality of such orders have been made. Unless otherwise indicated, appeal was not taken to a higher court, including the Supreme Court of the United States. Where it is indicated that an appeal was taken, the higher court did not reach and decide upon the merits of the constitutional issue.

Glendon A. Schubert, Jr., THE PRESIDENCY IN THE COURTS, copyrighted 1957, University of Minnesota

Title of Case	Presidential Order Declared Invalid	Function of Order	Basis of Decision	Court
9. *Ex parte* Merryman, 17 Fed. Cas. 144 (1861), No. 9487	Unnumbered Executive Order, April 27, 1861	Authorizing military officers to suspend privilege of writ of habeas corpus	Art. I, s. 9 (2) U.S. Constitution	Chief Justice, U.S. S. Ct.
10. *Ex parte* Benedict, 3 Fed. Cas. 159 (1862), No. 1292	War Department General Order, August 8, 1862	Suspending privilege of writ of habeas corpus for draft evaders and persons arrested for disloyalty	Art. I, s. 9 (2) U.S. Constitution	U.S. D. Ct., No. Dist. of N.Y.
11. Jones v. Seward, 40 Barbour 563 (1863)	Proclamation, September 24, 1862	Suspending privilege of writ of habeas corpus for draft evaders and persons arrested for disloyalty	Art. I, s. 9 (2) U.S. Constitution	State of N.Y., S. Ct.
12. *In re* Kemp, 16 Wis. 382 (1863)	Proclamation, September 24, 1862	Suspending privilege of writ of habeas corpus for draft evaders and persons arrested for disloyalty	Art. I, s. 9 (2) U.S. Constitution	State of Wis., S. Ct.
13. Griffin v. Wilcox, 21 Ind. 370 (1863)	Proclamation, September 15, 1863	Suspending privilege of writ of habeas corpus for all prisoners of the armed forces	Amendments V and X, U.S. Constitution	State of Ind., S. Ct.
14. *Ex parte* Milligan, 4 Wall. 2 (1866)	Proclamation, September 15, 1863	Suspending privilege of writ of habeas corpus for all prisoners of the armed forces	Separation of powers theory and conflict with statute	U.S. S. Ct.
15. McCall v. McDowell, 15 Fed. Cas. 1235 (1867) No. 8673	Proclamation, September 24, 1862	Suspending privilege of writ of habeas corpus for draft evaders and persons arrested for disloyalty	Art. I, s. 9 (2) U.S. Constitution	U.S. D. Ct., Dist. of Calif.
16. McElrath v. United States, 102 U.S. 426 (1880)	Order of Secretary of Navy, July 10, 1873	Revoking order dismissing Marine officer and accepting his resignation	Conflict with statute	U.S. S. Ct.
17. Blake v. United States, 103 U.S. 227 (1881)	Unnumbered Executive Order, September 28, 1878	Revoking acceptance of resignation of Army officer and reappointing him	Conflict with statute	U.S. S. Ct.

Title of Case	Presidential Order Declared Invalid	Function of Order	Basis of Decision	Court
18. United States v. Lee, 106 U.S. 196 (1882)	Instructions to the War Department	Directing seizure of estate of General Robert E. Lee for non-payment of taxes	Amendment V, U.S. Constitution	U.S. S. Ct.
19. Spalding v. Chandler, 160 U.S. 394 (1896)	Executive Order, April 8, 1847	Reserving for military and other purposes lands included within treaty Indian reservation	Conflict with treaty	U.S. S. Ct.
20. Muir v. Louisville and Nashville R.R. Co., 247 F. 888 (1918)	Proclamation, December 26, 1917	Seizing all railroads in U.S. and appointing Secretary of Treasury as director general	Separation of powers theory and conflict with statute	U.S. D. Ct., W. Dist. of Ky.
21. *In re* Schuster, 182 N.Y.S. 357 (1920)	Executive Order, November 26, 1918	Permitting certain enemy aliens to apply for naturalization	Separation of powers theory and conflict with statute	State of N.Y., S. Ct. for Kings County
22. United States v. Western Union Tg. Co., 272 F. 311 (1921); aff'd 272 F. 893 (1921); 260 U.S. 754 (1922)	Orders to Secretary of Navy, and Revoking License for Cable in Foreign Commerce	Directing Secretary of Navy to prevent landing of oceanic cable on U.S. soil; offering conditional license	Separation of powers theory and conflict with statute	U.S. S. Ct. of Dist. Col., reversed by S. Ct. on consent of parties
23. U.S. Harness Co. v. Graham, 288 F. 929 (1921)	Unnumbered Executive Order, June 14, 1921	Declaring void a public contract between plaintiff and War Department	Amendment V, U.S. Constitution	U.S. D. Ct., Dist. of W. Va.
24. Hood Rubber Co. v. Davis, 151 N.E. 119 (1926)	Unnumbered Executive Orders, October 30 and November 5, 1919	Authorizing fuel administrator to control distribution and fix prices of coal	Conflict with statute	State of Mass., S. Ct.
25. Johnson v. Keating *ex rel* Tarantino, 17 F. 2d 50 (1926)	Executive Order No. 4125, January 12, 1925	Requiring visas on passports of immigrant aliens	Conflict with statute	U.S. 1 C.C.A.

Title of Case	Presidential Order Declared Invalid	Function of Order	Basis of Decision	Court
26. United States *ex rel* Swyston v. McCandless, 24 F. 2d 211 (1928); 33 F. 2d 882 (1929)	Proclamation and Executive Order, August 8, 1918	Directing that certain aliens be deported	Conflict with statute	U.S. D. Ct., E. Dist., of Pa.; 3 C.C.A.
27. United States v. Pan-American Petroleum Co., 55 F. 2d 753 (1932); 287 U.S. 612	Executive Order, May 31, 1921	Transferring statutory duties of Secretary of Navy to Secretary of Interior	Conflict with statute	U.S. 9 C.C.A., c.d. by S. Ct.
28. United States v. Campbell, 5 F. Supp. 156 (1933), and 291 U.S. 686 (1934)	Executive Order No. 6260 of August 28, 1933	Prohibiting the ownership or possession of gold bullion	Amendment V, U.S. Constitution	U.S. D. Ct., S.D. N.Y.; appeal dismissed by S.Ct.
29. United States v. Driscoll, 9 F. Supp. 454 (1935)	Executive Order No. 6260 of August 28, 1933	Prohibiting the ownership or possession of gold bullion	Amendment V, U.S. Constitution	U.S. D. Ct., Dist. of Mass.
30. Panama Refining Co. v. Ryan, 293 U.S. 388 (1935)	Executive Orders, July 11, 1933, and July 14, 1933	Prohibiting interstate transportation of oil in excess of state quotas; delegating authority to Secretary of Interior	Separation of powers theory and conflict with statute	U.S. S. Ct.
31. Zeiss v. United States, 23 C.C.P.A. (Customs) 7 (1935)	Presidential Proclamation No. 2020, December 14, 1932	Raising tariff duties on optical instruments suitable for use by the armed services	Conflict with statute	C.C.P.A.
32. Schechter v. United States, 295 U.S. 495 (1935)	Executive Order No. 6675-A, April 13, 1934	Approving N.R.A. Code for Live Poultry Industry, metropolitan New York area	Separation of powers theory and Art. I, s. 8 (3), U.S. Constitution	U.S. S. Ct.

APPENDIX B. DISTRIBUTION OF CASES IN APPENDIX A ACCORDING TO SUBJECT

Chapter	Subject	Number of Cases	
		All Courts	United States Supreme Court
2	Public Personnel	5	3
3	Public Domain	2	1
4	Foreign Relations	9	2
5	Executive Tariff	1	0
6	Military Rule	9	3
7	Fifth Column	3	2
8	Economic Regulation	9	3

APPENDIX C. DISTRIBUTION OF CASES IN APPENDIX A CHRONOLOGICALLY BY DECADES

Emergency*	Decade	Number of Cases	Emergency*	Decade	Number of Cases
	1791–1800	0	Civil War	1881–1890	2
War of 1812	1801–1810	2		1891–1900	1
War of 1812	1811–1820	4		1901–1910	0
	1821–1830	0	World War I	1911–1920	2
	1831–1840	0	World War I	1921–1930	5
	1841–1850	1	Depression	1931–1940	7
Mexican War	1851–1860	1	World War II	1941–1950	3
Civil War	1861–1870	7	Korean War	1950–1956	2
Civil War	1871–1880	1			

* "Emergency" refers to the time relevant to the events of the cases. Of these 38 cases, in only 7 were neither the law nor the facts, nor both, directly related to the existence of an emergency. These 7 non-emergency cases include: Lorimier v. Lewis, 39 Am.D. 461 (1843); Blake v. United States, 103 U.S. 227 (1881); Spalding v. Chandler, 160 U.S. 394 (1896); United States v. Western Union Tg. Co., 272 F. 311 (1921); United States v. Pan-American Petroleum Co., 55 F. 2d 753 (1932); Zeiss v. United States, 23 C.C.P.A. (Customs) 7 (1935); Valentine v. United States *ex rel* Neidecker, 299 U.S. 5 (1936).

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No. 975

In the Supreme Court of the United States

OCTOBER TERM, 1957

FYKE FARMER, PETITIONER,

v.

UNITED STATES OF AMERICA AND J. M. ROUNTREE, DIRECTOR OF INTERNAL REVENUE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

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The petition for a writ of certiorari in this case raises the question whether the federal courts, in the exercise of their constitutional power to adjudicate cases and controversies, may pass upon the military and foreign policies of the United States (including the prosecution of the Korean War) being carried out by the executive and legislative branches of the Government. Petitioner attempted to submit these matters to adjudication by two pleadings filed in the United States District Court for the Middle District of Tennessee. The first is a complaint for a declaratory judgment for immunity from federal income taxes, to the extent that his taxes were being used to defray military expenditures in connection with the Korean War,

Title of Case	Presidential Order Declared Invalid	Function of Order	Basis of Decision	Court
33. Valentine v. United States *ex rel* Neidecker, 299 U.S. 5 (1936)	Preliminary Extradition Warrant Issued by U.S. Commissioner in New York City	To return to France U.S. citizens wanted as fugitives from French justice	Conflict with Constitution and treaty	U.S. S. Ct.
34. United States v. Ashley Bread Co., 59 F. Supp. 671 (1944)	Regulations Issued by War Food Administration	Prohibiting bakers from reclaiming unsold goods from retailers	Separation of powers theory and conflict with statute	U.S. D. Ct., Dist. of W. Va.
35. United States *ex rel* Von Heymann v. Watkins, 159 F. 2d 650 (1947)	Proclamation No. 2662, September 8, 1945	Implementing agreements for hemispheric defense, and ordering Secretary of State to deport dangerous interned enemy aliens	Conflict with statute	U.S. 2 C.C.A.
36. United States *ex rel* Hirshberg v. Cooke, 336 U.S. 210 (1949)	Navy Regulation, *Navy Courts and Boards*, Sec. 334	Extending court-martial jurisdiction beyond term of enlistment in which offense occurred	Conflict with statute	U.S. S. Ct.
37. Youngstown Sheet and Tube Co. v. Charles Sawyer, 343 U.S. 579 (1952)	Executive Order No. 10340, April 8, 1952 (17 Fed. Reg. 3139)	Authorizing and directing Secretary of Commerce to take possession of and operate the plants and facilities of certain steel companies	Separation of powers theory and conflict with statute	U.S. S. Ct.
38. Cole v. Young, 351 U.S. 536 (1953)	Executive Order No. 10450, April 27, 1953 (18 Fed. Reg. 2489)	Extending the provisions of the Security Act of August 26, 1950, to apply to all civilian employees of the national government	*Ultra vires* enabling statute	U.S. S. Ct.

coupled with a prayer for an injunction against collection of these taxes. (Complaint, R. 14a-28a.)[1] The second pleading is petitioner's answer to the complaint (R. 145a-147a) of the United States for income taxes for the year 1949 in the amount of $4,733.95.[2]

Both actions were heard together and decided upon motions by the Government on the pleadings—in petitioner's action, on motion to dismiss the complaint (R. 108a), and in the Government's action for taxes due, on motion for the relief requested (R. 170a).[3]

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[1] The original complaint included a lengthy brief (R. 32a-53a). It was amended three times at length (R. 69a-83a, 85a-94a, 109a-123a). This action was brought against the District Director of Internal Revenue, the Deputy Collector of Internal Revenue, and the First National Bank of Springfield, Tennessee (R. 15a). The Bank was made a party because it held petitioner's deposit of $6,750, subject to tax levy and warrant of distraint (R. 54a-56a). The Bank was dismissed from the case when, with petitioner's consent, the funds were deposited in the registry of the District Court (R. 64a, 84a). The defendants' motion to dismiss the original complaint (R. 53a-54a) was at one point denied by the District Court in order to give petitioner an opportunity "to develop his case fully on the merits" (R. 96a). A second motion to dismiss the amended complaint (R. 96a-97a) was likewise denied (R. 101a). The defendants then answered (R. 101a-103a).

[2] The answer of 120 pages is separately printed. While disputing the correct amount, it admits that income taxes are due (p. 2). It then asserts that petitioner is not required to pay any income taxes because the proceeds are "being used by the legislative and executive branches of the government (acting outside the scope of any powers conferred upon them by the Constitution) for the commission of crimes against peace, war crimes and crimes against humanity in violation of international law which is part of the law of the land of the United States" (p. 4). The judgment for taxes was for the correct amount of $4,706.56 (R 173a).

[3] Petitioner's motion to take depositions and secure answers to interrogatories were stayed pending the decision on these motions (R. 109a). The appendix erroneously captions the order of the District Court of September 26, 1956, denying petitioner's motion for leave to file affidavits, as "Motion for Judgment on the Pleadings Denied" (R. 167a-168a).

Both motions were granted and judgments entered accordingly (R. 138a-139a; 172a-173a). The memorandum opinion of the District Court (R. 125a-131a) is reported at 149 F. Supp. 327. Its opinion was adopted and its judgment affirmed by the court below in a *per curiam* opinion (Pet. 43-45) reported at 252 F. 2d 490. A petition for rehearing was denied on March 13, 1958 (Pet. 45). The petition for a writ of certiorari was filed on May 5, 1958.

The decisions below are clearly correct and there is no occasion for further review. Petitioner's "controversy" with the foreign policies of the Government of the United States is not one to be resolved in litigation over income taxes. It has long been settled that the judicial power of the federal courts does not extend to review of political actions of the executive and legislative branches of the Government undertaken in the conduct of foreign policy and international relations. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Foster* v. *Neilson*, 2 Pet. 253. It is equally plain that a citizen has no standing, by virtue of his common liability to pay taxes, to invoke the judicial process in order to seek such review. *Massachusetts* v. *Mellon*, 262 U. S. 447, 487-489.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

MAY, 1958.

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SUPREME COURT, U. S.

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FYKE FARMER,
Petitioner,

VS.

J. M. ROUNTREE, Director of Internal Revenue, et al.,
Respondents.

FYKE FARMER,
Petitioner,

VS.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION

FOR A REHEARING ON BEHALF OF PETITIONER

FYKE FARMER,
300 West Bellevue Drive
Nashville 5, Tennessee
Pro Se.

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PETITION

FOR A REHEARING ON BEHALF OF PETITIONER

Comes petitioner, Fyke Farmer, and moves for a rehearing of the decision denying certiorari in these cases for the following reasons:

The action of the Court in these cases is inconsistent with its action in case No. 462, Karadzole v. Artukovic, in which certiorari was granted on January 20, 1958. (2 L ed 2d)

The necessary and inescapable effect of the decision in the Karadzole case is that the judicial power extends to the determination of the questions of the criminality of acts of an official of a foreign government who has given orders resulting in mass murder in thousands and war crimes for which he is under indictment in the foreign country where the acts were committed.

The decision in petitioner's case refuses to extend the judicial power to the determination of the question of the criminality of orders and acts of essentially the same character committed by officials of the United States resulting in mass murder in millions and war crimes in foreign countries, notwithstanding the factual admission that has been made by the Government of the United States. Such a decision, of course, does not enhance the dignity of the Court.

Petitioner did not learn of the decision in the Karadzole case until the article about it appeared in the New York Times on June 15, 1958. Therefore, this ground was not advanced before the denial of certiorari on June 9, 1958.

Wherefore, petitioner insists that a rehearing should be granted and the judgments of the lower court reversed and judgment on the pleadings rendered in favor of petitioner.

Respectfully submitted,

FYKE FARMER,
300 West Bellevue Drive
Nashville 5, Tennessee
Pro Se.

CERTIFICATE

I, Fyke Farmer, hereby certify that the foregoing petition for rehearing is restricted to a substantial question not previously presented and is presented in good faith and not for delay.

Fyke Farmer

June 30, 1958